

THE
DIVISION COURTS ACT

CHAPTER 61

REVISED STATUTES OF ONTARIO, 1897

CAREFULLY ANNOTATED;

—ALSO—

THE NEW REVISED RULES AND FORMS, TOGETHER WITH A
REVIEW OF THE TARIFF OF FEES OF CLERKS AND
BAILIFFS, WITH FULL INSTRUCTIONS TO THE
OFFICERS OF THE COURTS ON QUESTIONS
MOST FREQUENTLY ARISING IN THE
COURSE OF THEIR DUTIES.

BY

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TO
THE HONOURABLE
Richard Harcourt, M.A., Q.C., M.P.,
THIS WORK
IS,
WITH HIS PERMISSION,
RESPECTFULLY INSCRIBED.

INTRODUCTION.

“WHY can we not have a book containing The Division Courts Act and all amendments thereto, and the Rules and Forms, and the Tariff, and the Descriptive Limits of Divisions, the place where the Court is held and post-office address of the officers, and other necessary information and particulars relating to Division Courts, all in one volume?”

Such was the question, or rather complaint, frequently addressed to the writer, who has had it urged upon him to undertake the task. And the result is the present work. Whatever may be its demerits in other respects—and the author is very conscious of his own shortcomings—an earnest endeavour has been made to supply the information called for as fully as possible within both the covers of the same book.

The material changes in garnishment and other proceedings introduced in the amending Acts of last session are noted in the proper place in the Act as consolidated, and the amending Acts are also given *in extenso* in the pages following immediately after the Act. Certain other statutes having close reference to ordinary practice in Division Courts are also given—their introduction, it is conceived, being warranted by that fact.

It is hoped that the annotation of sections of the Act, the observations on the Rules, the discussion of items of the Tariff, and the general information sought to be given, may prove helpful to suitors and officers of the Courts, useful to the profession and of interest to the general public,—for, however he may have failed in his work, such was certainly the strong and earnest desire that animated

THE AUTHOR.

Toronto, May, 1898.

THE
DIVISION COURTS ACT
OF THE
PROVINCE OF ONTARIO,

BROUGHT INTO FORCE ON THE 31ST DECEMBER, 1897.

CHAPTER 60, R. S. O.

HER MAJESTY, by and with the advice and consent of
the Legislative Assembly of the Province of Ontario,
enacts as follows:—

1. This Act may be cited as The Division Courts Act. Short title
R. S. O. 1887, c. 51, s. 1.

[The department for the inspection of Division Courts was established some twenty-five years ago. It is now a branch of the department of the Hon. the Provincial Treasurer. Mr. Joseph Dickey, the inspector, has acceptably filled the office since 1873. Altogether there are at the present time 321 clerks and 352 bailiffs, and as new Courts are opened, especially in the new districts, the number of course increases. In some of the divisions it is found necessary to appoint more than one bailiff of the Court, and thus the preponderance of the number of bailiffs over the clerks. From each of these periodical returns are required to be made, and from which the figures giving the large mass of

information contained in the annual reports are tabulated and compiled. All complaints against officers are made the subject of prompt enquiry by the inspector. The department is more than self-sustaining. When first established, it had been taken for granted that the cost of inspection would become a permanent charge upon the consolidated revenue of the Province. This view has proved quite erroneous. The percentages payable by clerks upon their fees and emoluments are not only sufficient to pay all expenses incurred in inspection, but bring also a tidy little sum every year to provincial revenues. To people who regard the Division Courts as "a bill of expense"; and, who, without information or enquiry upon their part, are disposed to utter words of condemnation against them, this will be somewhat of a surprise, as will also be the following facts and figures given in a late annual report of the inspector:

In a given year there were reported entered in the Superior Courts of Ontario, 7,041 cases. The number of judgments obtained was 2,423, for a total of \$2,500,000. In all the County Courts of the Province there were entered just 3,800 actions, for the same period, and the total amount for which judgments were entered, \$453,408.

In the Division Courts, for the same year, the returns show suits entered 63,054 (exclusive of transcripts of judgments and judgment summonses), and the total amount of claims to be \$2,447,196.

These figures will help to a realization of the relative importance of the Courts. Very different indeed to the picture presented by the old Court of Requests, as a means of collecting small debts, and supplanted in turn by 4 & 5 V. c. 33.]

Interpreta-
tion
"county."

2. In the construction of this Act, "county" shall include two or more counties, united for judicial purposes; and in any form or proceeding the words "united counties" shall be introduced where necessary. R. S. O. 1887, c. 51, s. 2.

THE COURTS.

3. The Division Courts, and the limits and extent thereof Courts con-
tinued existing at the time this Act takes effect, shall continue until altered by law. R. S. O. 1887, c. 51, s. 3.

4. There shall not be less than three nor more than twelve Number of
Courts in
each
county Division Courts in each county, of which Division Courts there shall be at least one in each city and county town. R. S. O. 1887, s. 51, s. 4.

5. The Court in each division shall be called "The First Designa-
tion of
" Court. Division Court in the county of (or as the case may be). R. S. O. 1887, c. 51, s. 5.

[The County Judge, the sheriff, the warden of the county and the inspector of Division Courts may alter the numbers and limits of Courts and establish new Courts and cancel existing Courts. See section 15. The Courts are, in most cases numbered consecutively, beginning with that of the county town. There are, however, in this case as in most others exceptions to the general rule. Elgin, Haldimand, Lincoln, Nipissing, Northumberland and Durham, Stormont, Dundas and Glengarry, and the county of Victoria are the exceptions. And in counties where Courts happen to be dropped, the cancelled number is skipped over to the next recurring number, as in Algoma, from 4 to 6, and in Hastings, from No. 7 to 9.]

SEALS.

6. Every Division Court shall have a seal, with which all Each Court
to have
a seal process of the Court shall be sealed or stamped, and such seal shall be paid for out of the Consolidated Revenue Fund. R. S. O. 1887, c. 51, s. 6.

[Applications for seals should be made to the inspector of Division Courts, by whom accounts for seals supplied are certified and sent to the Treasury Department for payment. The seals now adopted by Division Court clerks for their Courts are the metal lever stamps in use, and by which an

impression is made on the process issued from their Courts, shewing the number of the Court and county, surmounted by a crown.]

Not to be
Courts of
Record.

7. The Division Courts shall not be held to constitute Courts of Record, but the judgments in the said Courts shall have the same force and effect as judgments of Courts of Record. R. S. O. 1887, c. 51, s. 7.

[Courts of Record are defined to be those where the judicial acts and proceedings are enrolled for a perpetual memorial and testimony—which rolls are called records of the Court, and are of such high and super-eminent authority that their truth is not to be called in question.

In Division Courts a judgment may be recalled and a term imposed, or a change made at any time before a judgment found is entered.

A judgment in a Division Court is a bar to an action on the same subject matter in any other Court. A defendant against whom a judgment has been recovered is estopped from denying the indebtedness found to be due on the judgment. Such judgment bears interest, the same as a judgment of a Court of Record.]

HOLDING COURTS.

Time and
place of
holding
Courts.

8. A Court must be holden in each division once in every two months, or oftener, in the discretion of the senior or the acting County Judge; and the Judge may appoint, and from time to time alter the times and places, within such divisions, when and at which such Courts shall be holden. R. S. O. 1887, c. 51, s. 8.

[Sittings may be reduced upon application to the Lieutenant-Governor in Council. A Court must be held once in six months. In provisional judicial districts a Court must be held once in three months, with the same discretionary powers. In each of the two Courts of Toronto (I. and X. York) there must be weekly sittings, at least. See section 10.]

9. Notwithstanding anything contained in this Act, or any of the general rules now or hereafter in force in the Division Courts of this Province, in any city in which two Division Courts are established or held, all or any of the sittings of both of such Courts may be appointed and held in either of such divisions, and the clerks of both Courts may, with the approval of the Lieutenant-Governor in Council, have and keep their offices in the same division in such city, and the Lieutenant-Governor in Council may designate and appoint the place within any division in the Province where the office of the clerk of such division shall be situated. R. S. O. 1887, c. 51, s. 9; 57 V. c. 23, s. 9.

Holding
Courts in
cities, and
offices of
clerk
therein.

Appoint-
ment of
place of
office of
Division
Court clerk

[Up to the passing of the amending Act, 57 V. c. 23, the Judge had the power to designate the place of the clerk's office. By section 9 of that Act this power was placed in the Lieutenant-Governor in Council.]

10.—(1) In each of the Courts of the two divisions of the city of Toronto, known as the First and Tenth Division Courts of the County of York, at least weekly sittings shall be held, except during the month of August, for the trial of causes; and in each of the said two Division Courts at least monthly sittings for the hearing of judgment summonses; and also sittings at least every two months for the trial of cases where juries have been demanded.

Sittings in
Toronto.

[This provision was introduced into the Division Courts Act by 54 V. c. 15, s. 3. It is now made section 10 of R. S. O. 1897, and divided into sections 1 and 2.]

(2) The Judges of the County Court of the County of York, or any two of them, of whom the Senior Judge shall be one, may appoint additional sittings for any of the above purposes, and the Lieutenant-Governor in Council also shall have authority to appoint other sittings for any of the said purposes. 54 V. c. 15, s. 3.

11.—(1) The municipality in which a Division Court is held shall furnish a court room and other necessary accommodation for holding said Court, not in connection with an hotel.

Division
Courts
accommo-
dation.

If there be
no proper
Court room
etc., etc.,
Judge may
hold Court
in any suit-
able place.

(2) In case a proper court room, and other necessary accommodation for the holding of the Division Court are not furnished by the municipality in which the Court is held, the Judge may hold the Court in any suitable place in the division, or in any other division of the county in which suitable accommodation is provided; and the owner, lessee or tenant of the building in which the Court is so held, shall be entitled to receive from the municipality whose duty it was to provide proper accommodation for the Court, the sum of \$5 for every day on which the Court is held in the building.

Expenses
for rent.

Judge to
apportion
costs in
certain
cases.

(3) Where a municipality, not being a town or city, furnishes a court room and other necessary accommodation for a Division Court as aforesaid, or pays any owner, lessee or tenant for the use of any building, it shall be entitled to recover from any other municipality, wholly or partly, within the division for which such Court is held, such reasonable share of the cost of providing accommodation for holding the Court as shall in that behalf be decided and ordered by the Judge of the said Court, to be paid and contributed by the latter municipality; and in every such case the total cost of providing such accommodation for holding the Court shall be deemed to be \$5 for every day on which the Court is held. R. S. O. 1887, c. 56, s. 10.

[Where municipalities neglect to provide suitable accommodation, the Judge, it will be seen, has ample power to make a selection either inside or outside the division.]

Use of
Court
House.

12. The sittings of the Division Court in a county town may be held in the county court house, and in the cases of cities and towns separated from the county, the use of the court house for such purposes may be taken into account in settling the proportion of the charges to be paid by the city or town for the maintenance of the court house. R. S. O. 1887, c. 51, s. 11.

[In most towns and villages a town hall is made conveniently available for holding Court. The Judge has the right to hold the sittings of any Division Court in the county town at the court house.]

13. If the Justices of the Peace for any county, in General Sessions assembled, certify to the Lieutenant-Governor that in any division of the county, from the amount of business, remoteness or inaccessibility, it is expedient that the Court should not be held so often as once in every two months, the Lieutenant-Governor in Council may order the Court to be held at such periods as to him seems meet, and may revoke the order at pleasure, but a Court shall be held in the division at least once in every six months. R. S. O. 1887, c. 51, s. 12.

The Lieutenant-Governor may, in certain cases, regulate holding of Courts.

[A compliance with the requirements of this section will be—the certificate to be signed by the magistrates assembled at the General Sessions; the amount of business done and the remoteness or inaccessibility of the Court must be established satisfactorily.]

14. The clerk of the peace, in a book to be kept by him, shall record the divisions declared and appointed, and the time and place of holding the Courts, and the alterations from time to time made therein, and he shall forthwith from time to time transmit to the inspector of Division Courts a copy of the record. R. S. O. 1887, c. 51, s. 20; 55 V. c. 11, s. 3.

Clerks of the peace to record time and place for holding Courts.

[This is a new duty imposed upon clerks of the peace that should not be neglected by them.]

15.—(1) The County Judge, the sheriff, the warden of the county and the Division Courts inspector may, subject to the restrictions in this Act contained, appoint, and from time to time alter the number, limits and extent of every division, and shall number the divisions, beginning at number one, but no resolution or order made under the provisions of this section shall be altered or rescinded, unless public notice of the intention so to alter or rescind, or that application will be made to alter or rescind, is made and proclaimed in open Court at the next previous sittings of the General Sessions of the Peace.

Alteration of number and limits of divisions

If Judge
fails to
notify,
inspector
may do so.

(2) The Judge shall cause the sheriff, warden and inspector to be notified of any application, and of the time and place at which the same will be considered.

Provided that where the Judge fails to notify the sheriff, warden and inspector as aforesaid within one month after the sittings of the General Sessions of the Peace, the inspector may fix the time and place for considering the application and notify the Judge and sheriff accordingly.

[The proviso authorizing the inspector to notify the other members in case the Judge should fail to do so, was introduced in the Amending Act of the session of the Legislature, 61 V. 1898, after the promulgation of the R. S. O.]

A slip appears to have been made in dropping the "warden," and including only the Judge and sheriff as the officials to be notified by the inspector.

In districts, where the Judge fails to give the notice, there would of course be only the Judge and sheriff to be notified by the inspector, as properly provided by section 7 of the amending Act, which reads as follows:

Rev. Stat.
c. 109, s. 55,
sub-s. 3,
amended.

7. Sub-section 3 or section 55 of the Unorganized Territory Act is amended by adding thereto the following proviso:—

"Provided that where the Judge fails to notify the sheriff and inspector as aforesaid within one month after the sittings of the General Sessions of the Peace, the inspector may fix the time and place for considering the application and notify the Judge and sheriff accordingly."

Proclamation of the notice of application or intention to alter, in open Court, at the "next previous sittings" of the sessions is an indispensable pre-requisite to any action desired to be taken. The notice should set out fully and particularly the proposed changes and the limits and extent of the divisions to be affected. It should also be entered by the clerk of the peace in a book to be kept by him, so that in the event of a change being made there would be a proper record to which future reference could be made.

The inspector favors the widest possible publicity and publishing the notice in the newspapers, so that all interested or affected may have a chance of appearing before the board.

The order made should be entered by the clerk of the peace in the book already referred to, and a copy sent by him to the department of the inspector of Division Courts at the same time. A majority of the board may act and decide.]

16—(1) The Judge of a County Court may, in his discretion, upon the petition of any municipal council of any township or united townships, in which no Division Court has already been established, praying that a Division Court may be established in and for such township or united townships, establish and hold a Division Court therein, and the Court so established shall be numbered and called the Division Court of the county in which such township or united townships is or are situated, taking the number next after the highest number of the Courts then existing in such county.

Establishment by the County Judge of a Division Court in townships on petition of Township Council.

(2) No business shall be transacted in such Court until after the establishment thereof has been certified by the County Judge to the Lieutenant-Governor in Council, together with the petition praying for the same, nor until after an order has been passed by the Lieutenant-Governor in Council approving thereof. R. S. O. 1887, c. 51, s. 14.

Court must be confirmed by Lieutenant-Governor in Council.

[This section is nullified by the conditions of sub-section 2; and as it is never acted upon, might as well be struck out of the Act.]

17. Where a junior county separates from a senior county, or union of counties, the Division Courts of the united counties which were before the separation wholly within the territorial limits of the junior county, shall continue to be Division Courts of the junior county, and all proceedings and judgments shall be had therein, and shall continue proceedings and judgments of the said Division Courts respectively; and all such Division Courts shall be known as

On separation of junior from senior county, Courts to continue same till altered by County Board.

Division Courts of such junior county by the same numbers respectively as they were before, until the Judge of the county, the sheriff, the warden of the county and the inspector of the Division Courts, appoint the number, limits and extent of the divisions for Division Courts within the limits of such junior county, as provided in section 13 of this Act. R. S. O. 1887, c. 51, s. 15; 55 V. c. 42, s. 49 (5), part. See also c. 223, s. 52 (5).

[The senior county is taken to be that in which the courthouse and gaol are situated].

On alteration of divisions, Judge to direct in what Court proceedings to be continued.

18. Where the Judge of the county, the sheriff, the warden of the county, and the inspector of Division Courts, alter the number, limits or extent of the Division Courts within such county, all proceedings and judgments had in any Division Court before the day when such alteration takes effect shall be continued in such Division Court of the county as the Judge directs; and shall be considered proceedings and judgments of such Courts. R. S. O. 1887, c. 51, s. 16.

Clerks and officers to deliver papers to such persons as Judge directs.

19. In case a junior county is separated from a union of counties, or the proceedings of any of the Division Courts of a senior county are transferred to another Division Court within the county upon the order of the Judge, the clerks or other officers of such Division Courts who hold any writs or documents appertaining to such Courts, or the business thereof, shall deliver up the same to such persons as the Judge directs, and any person refusing to deliver up the same shall be liable to be proceeded against in the same manner as persons wrongfully holding papers and documents under the provisions of section 52 of this Act. R. S. O. 1887, c. 51, s. 17.

After separation of junior from senior county, proceedings in certain cases to be continued in senior county.

20. If after the separation of a junior county from a union of counties, the territorial limits of any of the Division Courts of the former union are partly within the junior and partly within the senior county, all proceedings commenced in such Division Courts of the former union shall be continued to completion in the Court where the proceedings

were originally commenced, or in such other Division Court of the senior county as the Judge thereof directs; and the clerks and other officers of the said Division Courts of such senior county in possession of any writs or documents appertaining to any such Court or to the business thereof, shall deliver over the same to the clerk of such Division Court of such county as the Judge thereof directs. R. S. O. 1887, c. 51, s. 18.

[Proceedings in suits are to be continued as the Judge shall direct.

Clerks and officers to deliver up papers as the Judge shall order.

After separation proceedings in certain cases to be continued in senior county].

21. Unless the Lieutenant-Governor by proclamation fixes the number, limits and extent of the Division Courts for the junior county, the Judge of the county, the sheriff, the warden of the county and the inspector of Division Courts, at a meeting to be called for the purpose, or at any adjourned meeting, shall, within three months after the issuing of a proclamation for separating a junior from a senior county, appoint the number (not less than three, nor more than twelve), the limits and extent of the several divisions within such county and the time when such change of divisions shall take place, and no resolution or order made under the provisions of this section shall be altered or rescinded, unless public notice of the intention so to alter or rescind is made and proclaimed in open Court at the next previous sittings of the General Sessions of the Peace. R. S. O. 1887, c. 51, s. 19.

Regulation
of limits on
separation
of a county.

[As it is very unlikely that the proclamation of the Lieutenant-Governor would go farther than declaring the separation, the County Board, that is the Judge, the sheriff, the warden and the inspector, shall, within three months after proclamation made, fix the number and limits of the new divisions].

THE JUDGE.

County
Court
Judges to
preside,

22.—(1) The Division Court shall be presided over by the County Court Judges or Junior or Deputy Judges in their respective counties.

Junior
Judge
to hold
Division
Courts.

(2) The Junior Judge for the county shall (subject to any other arrangements from time to time made with the Senior Judge or made by the Judges of a County Court District which includes such county) preside over the Division Courts of the county.

Senior
Judge
to hold
Division
Courts
when
expedient.

(3) The appointment of a Junior Judge shall not prevent or excuse the Judge of the County Court from presiding at any of the Division Courts within his county when the public interests require it. R. S. O. 1887, c. 51, s. 21.

Who to
preside in
case of
illness or
absence of
Judge.

23. In case of the illness or absence of the Judge, a Judge of the County Court of any other county may hold the Court or the first mentioned Judge may appoint some barrister of the Bar of Ontario to act as his deputy; and the Judge of such other County or the barrister so appointed shall, as Judge of the Division Court, during the time of his appointment, have all the powers and privileges, and be subject to all the duties vested in or imposed by law on the Judge by whom he has been appointed. R. S. O. 1887, c. 51, s. 22.

Lieuten-
ant-Gov-
ernor to be
notified of
appoint-
ment of
deputy.

24. The County Judge so appointing or the barrister so appointed deputy shall forthwith send to the Lieutenant-Governor notice of the appointment, specifying the name, residence and profession of the Deputy Judge, and the cause of his appointment. R. S. O. 1887, c. 51, s. 23.

Duration
of appoint-
ment.

25. No such appointment shall be continued for more than one month without a renewal of the like notice; and in case the Lieutenant-Governor disapproves of the appointment, he may annul the same. R. S. O. 1887, c. 51, s. 24.

Adjourn-
ment of
Court if
Judge does
not arrive
in time.

26 In case the Judge or the acting Judge, from illness or any casualty, does not arrive in time or is not able to open a Division Court on the day appointed for that purpose, the

clerk or deputy-clerk of the Court shall after eight o'clock in the afternoon, by proclamation, adjourn the Court to an earlier hour on the following day, and so from day to day, adjourning over any Sunday or legal holiday, until the Judge or acting Judge arrives to open the Court, or until he receives other directions from the Judge or acting Judge. R. S. O. 1887, c. 51, s. 25.

[The legal holidays are: Sundays, New Year's Day, Good Friday, Easter Monday, Christmas Day, Dominion Day, Her Majesty's Birthday, and Labor Day (first Monday in September).]

CLERKS AND BAILIFFS, ETC.

27. For every Division Court there shall be a clerk and a bailiff or bailiffs, who shall be British subjects, and shall respectively perform the duties of their office as regulated by Act of the Legislature, and by rules or orders made by the Board of County Judges. R. S. O. 1887, c. 51, s. 26.

Every Court to have a clerk and bailiff.

28. The Lieutenant-Governor may appoint during pleasure the clerk and bailiff or bailiffs of any Division Court. R. S. O. 1887, c. 51, s. 27.

Appointment of clerks and bailiffs.

29. No clerk of a Division Court shall practice as a barrister or solicitor. R. S. O. 1887, c. 51, s. 28.

Clerk not to practice as solicitor, etc.

30. The Judge of the County Court may at pleasure suspend or remove any clerk or bailiff within his own county heretofore appointed by a Judge. R. S. O. 1887, c. 51, s. 29.

Removal of clerk or bailiff by Judge.

31. The Lieutenant-Governor may, upon the report of the inspector, or of the County Court Judge, dismiss from office for misconduct or incompetency any clerk or bailiff heretofore appointed. R. S. O. 1887, c. 51, s. 30.

Dismissal of clerks and bailiffs.

[The distinction will be noted. A Judge may suspend or remove an officer heretofore appointed by a Judge. The Lieutenant-Governor may dismiss any officer upon report, for cause.]

Duty of
County
Court
Judges.

32.—(1) Nothing in this Act contained shall relieve the County Judge from the responsibility of seeing that the officers of his Court perform their duties, or from examining into complaints which may be made against them, or from the duties imposed upon him in reference to the security to be given by clerks and bailiffs, and such last mentioned duties are declared and shall be held to be of a judicial and not of an administrative character.

Suspension
of clerk or
bailiff by
Judge

(2) The Judge may, for cause, suspend any clerk or bailiff appointed by the Lieutenant-Governor, and in case of such suspension by him, he shall forthwith report the same and the cause thereof to the Provincial Secretary; and in case a vacancy shall occur in the office of clerk or bailiff within his county, the Judge shall forthwith notify the Provincial Secretary thereof. R. S. O. 1887, c. 51, s. 31.

[The Judge, it will be seen, can only suspend for cause, in this case, and he shall, forthwith, notify the Provincial Secretary.]

Inspector
may grant
leave of
absence to
clerks or
bailiffs.

33. Leave of absence may be granted by the inspector of Division Courts to any clerk or bailiff for a period not exceeding two months. In the event of leave of absence being so granted to any clerk, he may from time to time, with the approval of the inspector, appoint a deputy to act for him with all the powers and privileges, and subject to like duties. He may remove such deputy at his pleasure, and the clerk and his sureties shall be jointly and severally responsible for all the acts and omissions of the deputy. R. S. O. 1887, c. 51, s. 32.

When
clerk may
appoint
deputy.

34. The clerk may (with the approval of the Judge), from time to time, when prevented from acting, by illness or other unavoidable accident, appoint a deputy to act for him, with all the powers and privileges and subject to like duties, and may remove such deputy at his pleasure, and the clerk and his sureties shall be jointly and severally responsible for all the acts and omissions of the deputy. R. S. O. 1887, c. 51, s. 33.

[The distinction here will also be observed. Under section 33, leave may be granted by the inspector for any cause, for a period not exceeding two months. Under section 34, the Judge may approve of a temporary appointment by the clerk when the latter is prevented by illness or other unavoidable accident from acting.]

35. Where a bailiff is temporarily unable to perform the duties of his office from illness, leave of absence or other temporary disability, he may from time to time, with the approval of the inspector of Division Courts, appoint a deputy to act for him, with all the powers and privileges and subject to like duties, and may remove such deputy at his pleasure, and the bailiff and his sureties shall be jointly and severally responsible for all the acts and omissions of the deputy. No such appointment shall have force for a longer period than two months. R. S. O. 1887, c. 51, s. 34.

[A like power is given the inspector in granting leave of absence to bailiffs and approving of their deputies.]

SECURITY BY COVENANT, ETC.

36. Subject to the provisions of section 24 of The Act Respecting Public Officers, every clerk and bailiff of a Division Court shall give security, by a covenant according to the form in Schedule A to this Act, or in words to the same effect, with so many sureties, being freeholders and residents within the county, and in such sums as the County Judge directs, and, under his hand, approves and declares sufficient. Provided always that the Lieutenant-Governor in Council may increase or diminish the sum or sums for which any clerk or bailiff heretofore, or who may hereafter be appointed, shall be required to give security as aforesaid. R. S. O. 1887, c. 51, s. 35; 60 V. c. 14, s. 3.

37 —(1) Before a clerk or bailiff enters upon the duties of his office, the covenant of himself and sureties, approved as aforesaid, shall be filed in the office of the clerk of the peace in the county in which the Division Court is situated; and for filing and granting a certificate thereof, the clerk of the peace may demand from the clerk or bailiff the sum of \$1. R. S. O. 1887, c. 51, s. 36.

Appointment of deputy by bailiff.

Clerks and bailiffs to give security. Rev. Stat. c. 16.

Before clerk or bailiff enters on his duties, covenant to be filed with Clerk of the Peace.

Renewal of
clerks' and
bailiffs'
covenants.

(2) In the case of any such covenant requiring periodical renewal to keep it alive and in force, the renewal receipt granted for that purpose shall be filed with the clerk of the peace in whose office the covenant has been filed, and shall be attached to the covenant to which it refers. The clerk of the peace, for receiving and filing the said receipt, shall be entitled to receive from the clerk or bailiff the sum of fifty cents. 57 V. c. 23, s. 1.

[The proviso in section 36 is new. The arbitrary power which heretofore rested in the Judge of measuring the security of officers at his pleasure, has been somewhat modified. The Lieutenant-Governor in Council may now step in and prevent either favoritism or hardship in any extreme case.

In all cases of new appointments the blanks sent to officers to be filled up with particulars of sureties should be returned as soon as possible to the department of the inspector accompanied with the certificate of the clerk of the peace of filing. The certificate is returned after being examined and marked, and should be kept by clerks and bailiffs ready to be produced when called for.

The surety of guarantee companies is now being more generally made available by officers of the Courts. Such security is also in every way the more acceptable. Officers who resort to it, instead of placing themselves under obligations to personal friends, are rendered more independent. The rate is also now reduced to such a low figure—fifty cents on the hundred dollars—that no man who values his independence should feel like asking his friends to take the risk and inconvenience of joining in a covenant to the Crown with all its consequences.

Whenever a clerk or bailiff gives new sureties, the inspector should be immediately informed thereof, giving particulars of the new security.]

Covenant
to be avail-
able to
suitors, etc.

38. The covenant shall be available to, and may be sued upon in any Court of competent jurisdiction by any person suffering damages by the default, breach of duty or misconduct of the clerk or bailiff. R. S. O. 1887, c. 51, s. 37.

39. A copy of the covenant certified by the clerk of the peace, shall be received in all Courts as sufficient evidence of the due execution, and of the contents thereof, without further proof. R. S. O. 1887, c. 51, s. 38.

Certified copy of covenant to be received as evidence.

40.—(1) In an action or proceeding against any person as the surety of a clerk or bailiff, the entries in the books required by law to be kept or which were so kept by such clerk or bailiff shall be *prima facie* evidence against the surety.

Entries of clerk or bailiff evidence against surety.

(2) For the purposes of this section the words "clerk or bailiff" shall be held to include a person who having been a clerk or bailiff has ceased to be such clerk or bailiff. R. S. O. 1887, c. 51, s. 39.

41. If a surety in such covenant dies, becomes resident out of Ontario, or insolvent, the County Judge shall notify the clerk or bailiff for whom such person became surety, of such death, departure or insolvency, and the clerk or bailiff shall within one month after being so notified, give anew the like security, and in the same manner as hereinbefore provided, or forfeit his office of clerk or bailiff. R. S. O. 1887, c. 51, s. 40.

If surety dies, etc., a new surety to be furnished

42.—(1) Any surety for a clerk or bailiff who intends to withdraw from his responsibility may give notice in writing of his intention to the clerk or bailiff, as the case may be, and to the Judge of the County Court, which notice may be served personally or left with some grown up person at the office or place of residence of the person to whom it is addressed, or may be deposited in Her Majesty's post office prepaid and registered and addressed to such person at his usual post office address.

Procedure where sureties of clerk or bailiff discontinue suretyship.

(2) In such case the Judge shall forthwith on receipt thereof duly notify such clerk or bailiff, and the clerk or bailiff shall under penalty of forfeiture of his office (in addition to the suspension hereinafter mentioned) furnish the security of a new surety in lieu of the surety so giving notice,

and shall have the necessary new bond or covenant approved by the Judge and completed within one month after such notices have been so given to him and to the said Judge.

(3) If such bond or covenant shall not be so approved and completed within such month, the said Judge shall forthwith suspend such clerk or bailiff and report such suspension and the cause thereof to the Provincial Secretary and the inspector of Division Courts, and all accruing responsibility on the part of the person giving such notice shall cease from and after the expiration of five weeks from the day on which such notices were so given or the dates of such notices if not given on the same day. 55 V. c. 11, s. 2.

(4) Nothing herein contained shall discharge or exonerate any of the parties to such former bond or covenant from their liability on account of any matter done or omitted prior to the completion or approval of the new security or the expiration of the said five weeks. R. S. O. 1887, c. 51, s. 43.

[Except as to past transactions and matters, the liability of a surety ceases at the expiration of the five weeks after giving notice.]

Secs. 15-20
of Rev.
Stat. c. 15
to apply to
securities
given by
clerks and
bailiffs.

43. Sections 15 to 20, both inclusive, of The Act respecting Public Officers, shall, with the substitution of "The Judge of the Court" for "The Lieutenant-Governor," apply to securities given by a clerk or bailiff of a Division Court. R. S. O. 1887, c. 51, s. 42.

[See also c. 16, ss. 24-27, as to acceptance of policies of guarantee companies.

The sections referred to have reference to the security to be given by a public officer, and are made applicable to Division Court officers. The following are the sections:

Lieut.-Gov-
ernor may
remit
penalty
in certain
cases,

15. (1) The Lieutenant-Governor in Council may remit the forfeiture or penalty in any case in which the failure to give security, or to register and deposit any bond or security under this Act, has not arisen from the wilful neglect of the person bound to give, register or deposit the same.

(2) If it appears to the Lieutenant-Governor that the period hereinbefore limited for giving the security of a new surety as aforesaid is, in consequence of particular accidents, casualties, or circumstances, insufficient, or that by reason of the distance or loss of letters, or illness, or the refusal of any surety to give the security, or of such surety not being deemed eligible and being rejected, or any other accident or casualty, further time would be necessary to enable the security of such new surety to be given, the Lieutenant-Governor in Council may allow such further period for giving the security of such new surety as appears to him reasonable and proper.

(3) But such extended period shall in no case exceed two months beyond the period allowed by this Act, and the precise period proposed to be allowed, together with the special grounds for allowing the same, shall be either entered in the book in which the original security has been registered, or endorsed on the back of the original bond or other security itself; and the person required to give the security of such new surety shall not be subject to any forfeiture or penalty for not giving the same within the time limited by this Act, if he gives it within the extended period so allowed as aforesaid. R. S. O. 1877, c. 15, s. 15.

16. The Lieutenant-Governor may approve of the security given by any public officer or the affidavit of justification made by his sureties and filed by him, although the same has been given or filed after the time limited by this Act; and in such case the office or commission of such public officer shall be deemed not to have been avoided by such default, but to have remained and to remain in full force and effect. R. S. O. 1877, c. 15, s. 16.

17. No act of any public officer of this Province whose security has been given, or registered, or deposited, or the affidavit of justification of whose sureties has been filed after the time limited by this Act, shall, by such default, be void or voidable. R. S. O. 1877, c. 15, s. 17.

18. Where the securities of the principal and sureties have been executed at different times (whether they were

times,
within
what time
to be regis-
tered.

taken in one and the same bond, deed or other instrument, or in different ones), the period limited for registering and depositing such securities shall be estimated from the time of execution thereof by the person who was the last to execute the bond, deed or other instrument, or the last bond, deed or other instrument, as the case may be. R. S. O. 1877, c. 15, s. 18.

Neglect,
etc., not to
vacate
bond or
discharge
surety.

19. No neglect, omission or irregularity in giving or receiving the bonds or other securities, or in registering the same within the periods or in the manner prescribed by this Act, shall vacate or make void any bond or security, or discharge any surety from the obligations thereof. R. S. O. 1877, c. 15, s. 19.

Proper
officer to
register
and deposit
bonds,
although
time ex-
pired, but
not to
exempt
from
penalty.

20. All bonds or other securities hereby required to be registered and deposited, shall be registered and deposited by the proper officer, notwithstanding the period prescribed for registering and depositing the same has expired; but no registering and depositing of any bond or other security shall be deemed to waive any forfeiture or penalty, or shall exempt the person on whose behalf the same are registered and deposited, from any forfeiture or penalty, under any of the provisions of this Act. R. S. O. 1877, c. 15, s. 20.]

CLERK'S DUTIES.

Clerk to is-
sue sum-
monses and
furnish
copies, etc.

44. The clerk shall issue all summonses, which summonses shall be by him filled up, and shall be without blanks, either in date or otherwise, at the time of delivery for service; he shall also furnish copies of the same with the notice thereon according to the form prescribed by the general rules or orders from time to time in force relating to Division Courts R. S. O. 1887, c. 51, s. 44.

[The duties imposed on the clerk are imperative, yet he should exercise due discretion not to issue process where it was clear the Court had no jurisdiction. The original and copies should be compared with the bailiff.]

Clerk to
keep a
record of
writs and
judgments.

45. The clerk shall cause a note of all summonses, all notices filed by any party to the action, orders, judgments, executions and returns thereto, to be from time to time

fairly entered in a book to be kept in his office; and shall sign his name on every page of the book, and the signed entries, or a copy thereof certified as a true copy by the clerk, shall be admitted in all Courts and places as evidence of such entries, and of the proceedings referred to thereby, without further proof. R. S. O. 1887, c. 51, s. 45.

[The omission of the clerk's signature would be fatal. Each page of the procedure book should also be signed by the clerk.]

46. The procedure book and foreign procedure book to be kept by the clerk may be in the respective forms contained in Schedules B and C to this Act. 57 V. c. 23, s. 10. Procedure book and foreign procedure book.

47. The clerk shall also issue all warrants and writs of execution filled up and without blanks; he shall tax costs, subject to the revision of the Judge, register all orders and judgments of the Court, and keep an account of all fines payable or paid into Court, and of all suitors' moneys paid into and out of Court, and shall enter an account of all such fines and moneys in a book to be kept by him for that purpose; which book shall be open to all persons desirous of searching the same, and shall at all times be accessible to the Judge and inspector. R. S. O. 1887, c. 51, s. 46. Clerks to issue executions, tax costs and keep account of fines, etc.

48. Where the fees and emoluments earned by the clerk or the bailiff of any Division Court are less than \$500 a year, the cost of all books required by this Act to be kept by him shall be paid by the county. 52 V. c. 12, s. 1. When county to provide books.

49. The clerk of every Division Court shall from time to time, as often as required so to do by the county crown attorney of his county, and at least once in every three months, deliver to him, verified by the affidavit of the clerk sworn before the Judge or a justice of the peace of the county, a full account in writing of all fines levied by the Court, accounting for and deducting the reasonable expenses of levying the same, and any allowance which the Judge may make out of such fine, in pursuance of the power hereinafter given. R. S. O. 1887, c. 51, s. 47. Clerks to deliver to county crown attorney a verified account of fines.

Clerk to furnish Judge with a verified account of moneys paid in and out of Court.

50. The clerk of every Division Court, when required by the Judge, shall, from time to time furnish him with a full account in writing verified by the oath of the clerk sworn before the Judge or a justice of the peace, of the moneys received into or paid out of the Court by any suitors or other parties under any orders, judgments or process of the Court, and of the balance in Court belonging to any such suitors or parties. R. S. O. 1887, c. 51, s. 48.

Clerk annually to make list of suitors' money in Court for 6 years.

51.—(1) The clerk of every Division Court shall, annually in the month of January, make out a correct list of all sums of money belonging to suitors in the Court, which have been paid into Court and have remained unclaimed for six years before the last day of the month of December then last past, specifying the names of the parties for whom or on whose account the same were so paid.

Copy of list to be put up in Court room and in clerk's office.

(2) A copy of such list shall be put up and remain at all times in the clerk's office and during Court hours, in some conspicuous part of the court house, or place where the Court is held. R. S. O. 1887, c. 51, s. 49.

[As to return of fees by Division Court clerk, see chapter 16, sections 29, 30.]

DISPOSAL OF BOOKS AND PAPERS WHEN CLERKS CHANGED.

Upon resignation, removal or death of clerk, county crown attorney to become possessed of papers.

52.—(1) All accounts, moneys, books, papers, and other matters in the possession of the clerk or bailiff by virtue of or appertaining to his office, shall, upon his resignation, removal or death, immediately become the property of the county crown attorney of the county in which the division is situate, who shall hold the same for the benefit of the public until the appointment of another clerk or bailiff, to whom he shall deliver over the same, but not until such clerk or bailiff and his sureties have executed and filed the covenant hereinbefore mentioned. R. S. O. 1887, c. 51, s. 50 (1); 60 V. c. 14, s. 4.

Punishment of person wrongfully holding

(2) No person shall wrongfully hold or get possession of such accounts, moneys, books, papers and matters aforesaid, or any of them; and upon the declaration in writing

of the Judge presiding over the Division Court for the time being, or of the inspector of Division Courts, that a person has obtained or holds such wrongful possession thereof, and upon the order of a Judge of the High Court, founded thereon, such person shall be arrested by the sheriff of any county in which he is found, and shall by such sheriff be committed to the common gaol of his county, there to remain, without bail until the High Court, or a Judge thereof, is satisfied that such person has not and never had nor held any such matters or moneys, or that he has fully accounted for or delivered up the same to the county crown attorney of the county in which such Division Court is situated, or until he be otherwise discharged by due course of law. R. S. O. 1887, c. 51, s. 50 (2); 57 V. c. 3, s. 2.

moneys,
books or
papers.

53. Upon the resignation, removal or death of the clerk of a Division Court, and until such time as his successor is appointed, the county crown attorney of the county in which the division is situate shall perform all the duties and shall be for the time being, and until the successor is appointed, the clerk of such Division Court. 52 V. c. 12, s. 4.

County
attorney
to act as
clerk when
office of
clerk is
vacant.

DUTIES OF BAILIFFS.

54. The bailiffs shall serve and execute all summonses, orders, warrants, and writs delivered to them by the clerk for service, whether bailiffs of the Court out of which the same issued or not, and shall so soon as served return the same to the clerk of the Court of which they are respectively bailiffs; but, subject to the provisions of section 82, they shall not be required to travel beyond the limits of their division, or be allowed to charge mileage for any distance travelled beyond the limits of the county in which the Court of which they are respectively bailiffs is situated. R. S. O. 1887, c. 51, s. 51.

Bailiffs to
serve writs

[Upon a bailiff receiving a summons for service, he should immediately after service has been effected make his return showing the manner of service. Unless such return be made within the six days required by Rule 183, the bailiff is not

entitled to the fee for return and attendance and making affidavit, and it should not be taxed him by the clerk.

Where summons has not been served, the bailiff should immediately after the time for service has expired, return the same to the clerk, stating the reason for non-service on the back of the summons.

Bailiffs must return executions within the thirty days prescribed by the Act, unless renewed, or unless the seizure under the execution has been so recent that he has been unable to sell and advertise within the thirty days. In this latter case he must make a report to the clerk, pursuant to Rule 185 (a), as to the condition of matters.

If unable to sell or to realize a reasonable amount, he must not sacrifice the property, but must offer it for sale again, if within the thirty days. If after that, and the execution has not been renewed, the writ must be returned, pursuant to Rule 185 (b)—“Property on hand for want of buyers.”

In this latter case the clerk cannot renew the execution. He must issue another process directing the bailiff to sell the property for what it will bring. Rule 185 (c).

All money received for debt, interest, costs, fees and percentage must be paid over to the clerk; disbursements alone may be deducted. After the bailiff's fees and charges have been duly taxed, the clerk must pay the bailiff's taxed costs and proper fees on execution duly returned according to law, and none other, as provided by Rule 185 (d).

All money received by him by virtue of his office should be immediately paid over by the bailiff. Failure in this subjects him to the loss of office.

Immediately upon receiving an execution the bailiff should endorse thereon the day and hour when received. In addition to the formal return on every execution, a statement of all charges made for fees, except disbursements, should be given. A similar statement should be given in making returns of writs of replevin and warrants of attachment, in compliance with Rule 188.

The cash book required to be kept by him, by Rule 189, should show entries of all payments received by him from any party to a suit.

Where a summons is not served in time to make the notice of the sittings of the Court available information, it should be at once returned to the clerk. The latter should thereupon add new notices of the time of two or more sittings, and, forthwith, give or send the same to the bailiff for service. The proceeding may be repeated from time to time until due service is effected. In the case of a foreign Court, the summons must be returned to the clerk of that Court, to be dealt with by him in the same way.]

55. Every bailiff shall exercise the authority of a constable during the actual holding of the Court of which he is a bailiff, with full power to prevent breaches of the peace, riots or disturbances within the court-room or building in which the Court is held, or in the public streets, squares, or other places within the hearing of the Court, and may, with or without warrant, arrest all parties offending against the meaning of this clause, and forthwith bring the offenders before the nearest justice of the peace, or any other judicial officer having power to investigate the matter or to adjudge thereupon. R. S. O. 1887, c. 51, s. 52.

Bailiff to exercise duty of constable during holding of Court.

[Under this section a bailiff has the authority of a constable, but no greater authority.]

FEES OF CLERKS AND BAILIFFS.

56 —(1) The clerks and bailiffs shall be paid by fees, as provided and allowed by the general rules or orders applicable to Division Courts, heretofore in force or hereafter to be made by the Board of County Judges, and approved under the provisions of section 308 of this Act.

Clerks and bailiffs to be paid by fees.

(2) Until otherwise provided by the general rules or orders, the fees to be taken and received by appraisers shall be as follows:

Fees of appraisers.

To each appraiser, during the time actually employed in appraising goods (to be paid in first instance by the plaintiff and allowed in costs of the cause), Fifty cents per day.

Table of
fees to be
hung up
in clerk's
office.

(3) A table of the fees shall be hung up in some conspicuous place in the offices of the several clerks. R. S. O. 1887, c. 51, s. 53.

Cases
where
amount
involved
not more
than \$10.

57. In any action brought in a Division Court, when the claim sought to be recovered does not exceed \$10, it shall not be necessary that the clerk shall notify the plaintiff that no defence has been entered, nor shall the schedule or tariff of clerk's or bailiff's fees now in force, or that at any time hereafter may be in force, apply to or be taxable in any such action, except the fees for mileage to a bailiff, the fees for enforcing a warrant of attachment, warrant against the body or writ in replevin, and the fee allowed by item number 24 of the schedule of clerk's fees, for receiving papers from another division for service, entering the same, handing the same to the bailiff, and receiving and entering his return.

Fees of
clerks and
bailiffs.

(2) Excepting such fees as are hereinbefore excepted, the fees taxable to and to be received by the several clerks and bailiffs of the Division Courts in any action in which the sum sought to be recovered does not exceed \$10, shall be as follows:—

- (a) To the clerk, for all services rendered by him as such clerk, from the time of entering the action or suing out a judgment or interpleader summons up to and including the entering of final judgment or final order on any such judgment or interpleader summons in case the action proceeds to judgment or final order \$1 25

In case the action does not proceed to judgment or final order the fees heretofore or that may hereafter be payable, but not exceeding in the whole the said sum.

For issuing writ of execution, warrant of attachment or warrant for arrest of delinquent and entering the return thereto 50

(b) To the bailiff, for all services rendered by him as such bailiff, in serving the summons and making his return thereof to the clerk of the Court, or any other service that may be necessary before judgment is entered by the clerk or pronounced by the Judge, mileage excepted 40

For enforcing writ of execution, schedule of property seized or attached, bond where necessary, and all other necessary acts done by him after seizure, mileage excepted, if money made, or case settled after levy 1 00

Necessary disbursements incurred in the care and removal of property shall be allowed, to be first allowed by the clerk, subject to the approval of the Judge. 57 V. c. 23, s. 11.

58. The fees upon every proceeding shall, on or before such proceeding, be paid in the first instance by the plaintiff, or other party at whose instance the proceeding takes place. R. S. O. 1887, c. 51, s. 54. Fees to be paid by plaintiff or defendant in first instance.

59. If the fees are not paid in the first instance by the plaintiff or party on whose behalf such proceeding is to be had, the payment thereof may, by order of the Judge, be enforced by execution in like manner as a judgment of the Court, by such ways and means as any debt or damages ordered to be paid by the Court can be recovered. R. S. O. 1887, c. 51, s. 55. How enforced.

60. At the time of the issue of the execution, the bailiff's fees thereon shall be paid to the clerk, and shall by him be paid over to the bailiff, upon the return of the execution, and not before, but if the bailiff does not become entitled to any part, or becomes entitled to a part only, of such Bailiff's fees to be paid to clerk before execution issues.

fees, the whole or surplus shall on demand be by the clerk repaid to the plaintiff or party from whom the fees were received. R. S. O. 1887, c. 51, s. 56.

Bailiff to
forfeit fees
if he neg-
lects to re-
turn writ.

61. If the bailiff neglects to return any process or execution within the time required by law, he shall for each such neglect forfeit his fees thereon, and all fees so forfeited shall be held to have been received by the clerk, who shall keep a special account thereof, and account for and pay over the same to the county crown attorney, to be paid by him over to the Provincial Treasurer, to form part of the Consolidated Revenue Fund. R. S. O. 1887, c. 51, s. 57.

Clerk or
bailiff not
to collect
on com-
mission.

62. No clerk or bailiff shall directly or indirectly take or receive any commission, charge, expenses, fee or reward for or in connection with the collection of any debt or claim which has been or may or can be sued in the Court for which he is so clerk or bailiff, except such fees as are provided by any tariff of fees under this Act. R. S. O. 1887, c. 51, s. 58.

INSPECTOR.

Appoint-
ment of
inspector.

63. The Lieutenant-Governor may, from time to time, appoint an inspector of Division Courts, who shall hold office during pleasure, and whose duty shall be:

Inspection
of offices.

1. To make a personal inspection of every Division Court and of the books and Court papers belonging thereto;

Books, etc.

2. To see that the proper books are provided, that they are in good order and condition, that the proper entries and records are made therein in a proper manner, at proper times, and in a proper form and order, and that the Court papers and documents are properly classified and preserved;

Officers'
duties

3. To ascertain that the duties of the officers of the Division Courts are duly and efficiently performed, and that the office is at all times duly attended to by the clerk;

Lawful
fees.

4. To see that lawful fees only are taxed or allowed as costs;

5. When directed so to do by the Lieutenant-Governor, ^{Security by clerks and bailiffs.} to ascertain that proper security has been given by any clerk or bailiff, and that the sureties continue sufficient;

6. To report upon all such matters as expeditiously as ^{Report to the Lieutenant-Governor.} may be to the Lieutenant-Governor for his information and decision. R. S. O. 1887, c. 51, s. 61.

64. When the inspector considers it expedient to in- ^{Power of inspector in making inquiry into conduct of officers.} stitute an inquiry into the conduct of a Division Court clerk or bailiff in relation to his or their official duties or acts, it shall be lawful for the inspector to require the clerk or bailiff or other person or persons, to give evidence on oath, and for this purpose the inspector shall have the same power to summon such officers, or other person or persons, to attend as witnesses, to enforce their attendance, and to compel them to produce documents, and to give evidence, as any Court has in civil cases. R. S. O. 1887, c. 61, s. 62.

65. The Division Court clerks and bailiffs shall, as ^{Books, etc., to be produced for inspection.} often as required by the inspector, produce all books and documents required to be kept by them, or that may hereafter be required to be kept by them, at the clerk's office, for examination and inspection: every clerk or bailiff shall report to the inspector such matters relating to any cause or proceeding as the inspector shall require. R. S. O. 1887, c. 51, s. 63.

66. It shall be the duty of every Division Court clerk or bailiff, within five days after his appointment to office, to ^{Officers to inform inspector of their appointment, etc.} inform the inspector of his appointment, his full name and post office address, the names of his sureties, their respective callings or professions, places of residence, and post office address. R. S. O. 1887, c. 51, s. 64.

67. When a clerk or bailiff has given new sureties, as ^{Inspector to be informed of new sureties.} required by this Act, he shall immediately inform the inspector of such change, giving the names of the sureties, their respective callings or professions, places of residence, and post office address. R. S. O. 1887, c. 51, s. 65.

Officers to
produce
certificate
of filing
covenant,
etc.

68. Every Division Court clerk and bailiff shall have and keep in his possession or custody the certificate of the clerk of the peace named in section 37 of this Act, and shall produce the same for the information of the inspector when required so to do. R. S. O. 1887, c. 51, s. 66.

Returns

69. Every clerk shall, on or before the 15th day of January in each year, make a return of the business of his office for the year ending the 31st day of December preceding, in such form and manner as the Lieutenant-Governor shall direct. R. S. O. 1887, c. 51, s. 67.

Clerks to
make re-
turns to
inspector.

70. Every clerk and bailiff shall keep a separate book in which he shall enter from day to day all fees, charges and emoluments received by him by virtue of his office, and shall on the 15th day of January, in every year, make up to and including the 31st day of December of the previous year, a return to the inspector, under oath, showing the aggregate amount of fees, charges and emoluments so received by him and which he has become entitled to receive, and has not received, during the year. R. S. O. 1887, c. 51, s. 68.

JURISDICTION.

Cases in
which
Court has
no juris-
diction.

71. The Division Courts shall not have jurisdiction in any of the following cases:

1. Actions for any gambling debt;
2. Actions for spirituous or malt liquors drunk in a tavern or alehouse;
3. Actions on notes of hand given wholly or partly in consideration of a gambling debt or for such liquors;
4. Actions for the recovery of land or actions in which the right or title to any corporeal or incorporeal hereditaments, or any toll, custom or franchise comes in question;
5. Actions in which the validity of any devise, bequest or limitation under any will or settlement is disputed;

6. Actions for malicious prosecution, libel, slander, criminal conversation, seduction, or breach of promise of marriage;

7. Actions against a justice of the peace for anything done by him in the execution of his office, if he objects thereto. R. S. O. 1887, c. 51, s. 69.

72.—(1) The Division Courts shall have jurisdiction in the following cases:

Cases in which the Court has jurisdiction.

(a) All personal actions where the amount claimed does not exceed \$60. R. S. O. 1887, c. 51, s. 70 (1a).

(b) In any personal action if all the parties consent thereto in writing, and the amount claimed does not exceed \$100. 56 V. c. 15, s. 1.

(c) All claims and demands of debt, account or breach of contract, or covenant or money demand, whether payable in money or otherwise, where the amount or balance claimed does not exceed \$100. R. S. O. 1887, c. 51, s. 70 (1b).

(d) All claims for the recovery of a debt or money demand the amount or balance of which does not exceed \$200, where the amount or original amount of the claim is ascertained by the signature of the defendant or of the person whom, as executor or administrator, the defendant represents. Interest accumulated upon any claim of this class, since the amount or balance was so ascertained by the signature of the defendant or of the person whom he represents, shall not be included in determining the question of jurisdiction, but interest so accumulated may be recovered in a Division Court in addition to the claim, notwithstanding the interest and the amount of the claim so ascertained together exceed the sum of \$200. R. S. O. 1887, c. 51, s. 70 (1c); 56 V. c. 15, s. 2.

Accumulated interest on ascertained claims.

Abscond-
ing debtors

(2) In the class of cases provided for by clause (d) of sub-section 1 of this section, the additional jurisdiction thereby conferred shall apply to claims and proceedings against absconding debtors under section 257, and subsequent sections of this Act; and in such cases the attachment may issue and proceedings may be had on a claim of not less than \$4 and not more than \$200.

(3) Claims combining:

Combining
causes of
action.

(a) A cause or causes of action in respect of which the jurisdiction of the Division Courts is, by the foregoing sub-sections of this section, limited to \$60, which causes of action are hereinafter designated as class (a).

(b) A cause or causes of action in respect of which the jurisdiction of the said Courts is by the said sub-sections limited to \$100, which causes of action are hereinafter designated as class (b);

(c) A cause or causes of action in respect of which the jurisdiction of the said Courts is by the said sub-sections limited to \$200, which causes of action are hereinafter designated as class (c);

may be tried and disposed of in one action, and the said Courts shall have jurisdiction so to try the same; Provided that the whole amount claimed in any such action in respect of class (a) shall not exceed \$60; and that the whole amount claimed in any action in respect of classes (a) and (b) combined, or in respect of class (b) where no claim is made in respect of class (a), shall not exceed \$100, and that the whole amount claimed in respect of classes (a) and (c) or (b) and (c) combined, shall not exceed \$200, and that in respect of classes (b) and (c) combined, the whole amount claimed in respect of class (b) shall not exceed \$100.

(4) The finding of the Court upon the claims when so joined as aforesaid shall be separate. R. S. O. 1887, c. 51, s. 70 (2), (3), (4).

(5) The Division Courts shall also have jurisdiction in all actions of replevin, where the value of the goods or other property or effects distrained, taken or detained, does not exceed the sum of \$60, as provided in the Replevin Act. Jurisdiction in replevin. R. Rev. Stat. c. 60.
S. O. 1887, c. 51, s. 72.

73. Except in cases in which a jury is legally demanded by a party as hereinafter provided, the Judge shall hear and determine in a summary way all questions of law and fact and may make such orders or judgments as appear to him just and agreeable to equity and good conscience, which shall be final and conclusive between the parties, except as herein otherwise provided. Judge to try. R. S. O. 1887, c. 51, s. 70 (1), part.

74. Upon any contract for the payment of a sum certain in labour or in any kind of goods or commodities or in any other manner than in money, the Judge, after the day has passed on which the goods or commodities ought to have been delivered or the labour or other thing performed, may give judgment for the amount in money as if the contract had been originally so expressed. Judge may order payment in money, although contract not for payment in money. R. S. O. 1887, c. 51, s. 71.

75. Every Division Court shall as regards all causes of action within its jurisdiction for the time being, have power to grant and shall grant in any proceeding before such Court such relief, redress, or remedy, or combination of remedies, either absolute or conditional, including the power to relieve against penalties and forfeitures, and shall in every such proceeding give such and the like effect to every ground of defence or counter-claim, equitable or legal (subject to the provision next hereinafter contained), in as full and ample a manner as might and ought to be done in the like case by the High Court. Powers of Courts. R. S. O. 1887, c. 51, s. 73; 60 V. c. 3, s. 3; c. 15, Sched. A (64).

[This section is amended by section 1 of the Amending Act of the Legislature, passed January, 1898, as follows:

1. Section 75 of the Division Courts Act is amended by adding thereto the following sub-section:

D.C.A.—3

Rev. Stat.
c. 60, s. 75,
amended.

Division
Courts not
to grant
injunc-
tions.

(2) Nothing in this section shall confer or be deemed to have conferred on a Division Court jurisdiction to grant injunctions in cases otherwise within the competency of the Court.

Judgment
summons
where
principal
and inter-
est sued for
separately

2. Where a judgment has been recovered in an action in the Division Court, which, but for the enactment of the 5th section of chapter 14 of 60th Victoria, now sub-section 2 of section 79 of the Division Courts Act, could not have been recovered in the Division Court, the Court or Judge shall not commit the debtor to gaol upon or in connection with a judgment summons where a judgment debtor could or would not have been committed to gaol upon or in respect of a judgment recovered in a higher Court, or upon or by reason of an examination upon a judgment summons issued upon such last mentioned judgment.

The full text of the Amending Act will be found at the end of this book.]

Duty of
Court
where de-
fence or
counter-
claim
involves
matter
beyond
jurisdic-
tion.

76. Where, in any proceeding before a Division Court any defence or counter-claim of the defendant involves matter beyond the jurisdiction of the Court, such defence or counter-claim shall not affect the competence or the duty of the Court to dispose of the whole matter in controversy so far as relates to the demand of the plaintiff and the defence thereto, but no relief exceeding that which the Court has jurisdiction to administer shall be given to the defendant upon any such counter-claim. R. S. O. 1887, c. 51, s. 74.

[As to transfer of cases from the Division Court to the High Court, see c. 51, s. 186.]

No privi-
lege to
exempt
from juris-
diction of
Court.

77. No privilege shall be allowed to any person to exempt him from suing and being sued in a Division Court; and any executor or administrator may sue or be sued therein; and the judgment and execution shall be such as in like cases would be given or issued in the High Court. R. S. O. 1887, c. 51, s. 75.

78. A minor may sue in a Division Court for any sum not exceeding \$100 due to him for wages, in the same manner as if he were of full age. R. S. O. 1887, c. 51, s. 76. Minors may sue for wages.

79.—(1) A cause of action shall not be divided into two or more actions for the purpose of bringing the same within the jurisdiction of a Division Court, and no greater sum than \$100 shall be recovered in any action for the balance of an unsettled account, nor shall any action for any such balance be sustained where the unsettled account in the whole exceeds \$400. R. S. O. 1887, c. 51, s. 77. Causes of action not to be divided.

(2) Where a sum for principal and also a sum for interest thereon is due and payable to the same person upon a mortgage, bill, note, bond, or other instrument, he may, notwithstanding anything in this section contained, but subject to the other provisions of this Act, sue separately for every sum so due. 60 V. c. 14, s. 5.

80. A judgment of a Division Court upon an action brought for the balance of an account shall be a full discharge of all demands in respect of the account for the balance of which such action was brought, and the entry of judgment shall be made accordingly. R. S. O. 1887, c. 51, s. 78. Judgment to be full discharge.

81. When it appears at any stage of an action otherwise of the proper competency of the Division Court, that such Court has not cognizance thereof, on account of the title to land or any corporeal or incorporeal hereditament, or any toll, custom or franchise coming in question, or the validity of any devise, bequest or limitation under a will or settlement being disputed, the action shall not on that account be dismissed, but a Judge of the High Court, or a Judge of the Division Court, in which the action is pending, may order the same to be transferred to the High Court upon such terms as to the payment of costs or otherwise as the Judge making the order thinks fit, and thereafter the action shall proceed in the High Court as if originally commenced therein, and as if the defendant had entered an appearance; or the Judge making the order may give any directions as to procedure which he deems proper. 60 V. c. 14, s. 14. Transfer of actions to High Court.

Causes
may be re-
moved by
certiorari
in certain
cases.

82. In case the debt or damages claimed in an action brought in a Division Court amounts to \$40 and upwards, and in case it appears to any of the Judges of the High Court that the case is a fit one to be tried in the High Court, and in case a Judge thereof grants leave for that purpose, the action may by order of *certiorari* be removed from the Division Court into the High Court upon such terms as to payment of costs or other terms as the Judge making the order thinks fit. R. S. O. 1887, c. 51, s. 79.

PROCESS AND PROCEDURE.

Court
where
action may
be tried to
have full
power.

83. When it is by this Act provided that a claim may be entered, or an action brought, or that any person or persons may be sued in a Division Court, or that an action may be transferred to any other Court, such Court shall have jurisdiction in the premises, and all proceedings may be had and taken both before and after judgment in or relating to such claim or cause as may now be had and taken, in or relating to any claim or cause which has been lawfully entered in the Court holden for the division in which the cause of action arose, or in which the defendant or any one of several defendants resided or carried on business at the time the action was brought. R. S. O. 1887, c. 51, s. 80.

DIVISION IN WHICH ACTION TO BE ENTERED.

In what
Court
actions
may be
entered
and tried

84. Any action cognizable in a Division Court may be entered and tried in the Court holden for the division in which the cause of action arose or in which the defendant or any one of several defendants resides or carries on a business at the time the action is brought, notwithstanding that the defendant at such time resides in a county or division different from the one in which the cause of action arose. R. S. O. 1887, c. 51, s. 81.

Actions
may be
brought
and tried
in the
Court
nearest to
the defend-
ant's resi-
dence.

85.—(1) Such action may be entered and tried and determined in the Court the place of sitting whereof is the nearest to the residence of the defendant, and the action may be entered, tried and determined irrespective of the place where the cause of action arose, and notwithstanding that the defendant at the time resides in a county or division

other than the county or division in which the Division Court is situate, and the action entered. R. S. O. 1887, c. 51, s. 82 (1).

(2) It shall be sufficient if the summons in such case be served by a bailiff of the Court out of which it issues, in the manner provided in section 100 of this Act; and upon judgment recovered in any such action a writ of *feri facias* against the goods and chattels of the defendant, and all other writs, process and proceedings to enforce the payment of the judgment, may be issued to the bailiff of the Court, and be executed and enforced by him in the county in which the defendant resides, as well as in the county in which judgment was recovered. R. S. O. 1887, c. 51, s. 82 (2).

Service of
summons
in such
cases.

Execution.

86. In case a person desires to bring an action in a division other than as in the next preceding two sections mentioned, a County Judge may by special order authorize an action to be entered and tried in the Court of any division in his county adjacent to the division in which the defendant or one of the several defendants resides, whether such defendant resides in the county of the Judge granting the order or in an adjoining county. R. S. O. 1887, c. 51, s. 83.

When
actions
may be
brought in
other than
the regular
divisions.

87.—(1) When it is by this Act provided that a claim may be entered, or an action brought, or that any person or persons may be sued in a Division Court, such action may be brought, notwithstanding that the residence of the defendant is, at the time of bringing the action, out of the Province of Ontario, and such action may be brought in the Division Court of the division in which the cause of action arose or partly arose, and continued to completion in as full and effectual a manner as might have been the case if the defendant resided in the Province. 57 V. c. 23, s. 12; 60 V. c. 14, s. 12.

Actions
when de-
fendant
resides out
of the
Province.

(2) The service of the summons in any such case may be made by a bailiff of the Court out of which it is issued, or by some competent person, who may, either before or after the service, be approved by the Judge or the clerk of the

Service of
summons
on non-
residents.

Court for that purpose, but such summons shall be served at least fifteen days before the return day thereof. 57 V. c. 23, s. 13.

Proof of service.

(3) The necessary affidavit of service, if not made before a Division Court clerk, or a commissioner for taking affidavits in the Province, may be sworn before any notary public in the country in which such service has been made, and such affidavit shall be held to be as effectual as if made by a bailiff of the Court, before the clerk. 57 V. c. 23, s. 14.

Allowance for service out of Ontario.

(4) In any case in which service of the summons on the defendant has been effected out of Ontario, the Judge may, upon application to him, allow, as costs in the cause, a sum of money towards the expenses incurred in effecting such service, but such allowance shall not in any case exceed in the whole five dollars. 60 V. c. 14, s. 13.

Where defendant is a corporation the head office of which is not in Province.

88. In every case where the defendant is a corporation not having its head office in the Province and the cause of action arose partly in one division and partly in another, the plaintiff may bring his action in either division. R. S. O. 1887, c. 51, s. 84.

Where money made payable out of the Province.

89. Where the debt or money payable exceeds \$100, and is by the contract of the parties made payable at a place out of the Province of Ontario, the action may be brought thereon in any Division Court, subject, however, to the place of trial being changed upon the application of one or more of the defendants as provided by the next succeeding section. R. S. O. 1887, c. 51, s. 85.

Place of trial where amount sued for exceeds \$100; changing place of trial in such cases.

90.—(1) Where the debt or money payable exceeds \$100, and is made payable by the contract of the parties at any place named therein, the action may be brought thereon in the Court holden for the division in which the place of payment is situate, subject, however, to the place of trial being changed to another division in which the Court holden therein has jurisdiction in the particular case.

(2) To procure such change an order to that effect shall be obtained by the defendant from the Judge of the county in which the action is brought.

(3) The application for the order shall be made within eight days from the day on which the defendant who makes the application was served with the summons, where the service is required to be ten days before the return; or within twelve days after the day of such service, where the service is required to be fifteen days or more before the return.

(4) The application shall be on affidavit that the applicant intends to defend the action, that he has a good defence upon the merits, that the cause of action did not wholly arise in the division in which the action is brought, and that the witnesses for the defence, or some of them, reside within the division in which the defendants, or one of them, resided or carried on business at the time the action was brought, and that the application is not made for the purpose of delay; the date of the next two sittings of the Court to which it is sought to have the cause transferred shall also be shown.

(5) The affidavit shall be made by a defendant, or in case satisfactory reasons are shown for the same not being made by a defendant, then by the solicitor or agent of a defendant.

(6) The order shall direct at what sittings of the Court the action shall be tried, subject to all rights of postponement as in other cases, and shall be attached to the summons and other proceedings in the action by the clerk, who shall forthwith transmit the same to the clerk of the Court in which the action is by such order directed to be tried, and enter a minute thereof in his procedure book.

(7) Upon receipt of the order and other papers by the clerk of such last mentioned Court, he shall enter the action and proceedings in his procedure book.

(8) All the papers and proceedings in the cause thereafter shall be entitled and had and carried on as though the action had originally been entered in the said last mentioned Court.

(9) It shall be the duty of the defendant obtaining the order forthwith to serve, or cause to be served, a copy of the same upon the plaintiff or his agent in the same manner as summonses are required to be served under this Act. R. S. O. 1887, c. 51, s. 86.

[As to actions on insurance premium notes and assessments, see c. 203, s. 138.]

When
action
entered in
wrong
Court.

91.—(1) If an action shall be entered in a Division Court which should have been entered in some other Division Court of the same or some other county, the cause shall not abate as for want of jurisdiction, but on such terms as the Judge shall order, all the papers and proceedings in the cause may be transferred to any Division Court having jurisdiction in the premises, and shall become proceedings thereof as if the cause had been at first properly entered therein, and the same shall be continued and carried on to the conclusion thereof as though the action had originally been entered in the said last mentioned Court; but the party making the application shall satisfy the Judge by affidavit of the alleged want of jurisdiction of the said Court. R. S. O. 1887, c. 51, s. 87; 52 V. c. 12, s. 5, part.

(2) The clerk of the Court to which proceedings have been transferred, shall place the action on the list for trial at the next sittings of his Court, if he receives the papers in the cause six clear days or more before the date of the said sittings, but if not, then he shall place it on the list for trial at the sittings next thereafter; and he shall forthwith, after receiving the said papers, notify the parties or their agents by mailing them registered notices informing them of the date, hour and place of the said sittings, and the clerk of the Court issuing the summons shall certify in detail to the Court to which the case is transferred all the costs incurred in the action up to the date of such transfer. 52 V. c. 12, s. 5, part.

Clerks and
bailiffs
may sue
and be
sued in
adjoining
divisions.

92.—(1) Every clerk or bailiff may sue and be sued for any debt due to or by him, as the case may be, separately or jointly with another person in the Court of any next adjoining division in the same county, in the same manner, to

all intents and purposes, as if the cause of action had arisen within such next adjoining division, or the defendant was resident therein, and no clerk or bailiff shall bring any action in the Division Court of which he is clerk or bailiff. R. S. O. 1887, c. 51, s. 88.

(2) Nothing in this section contained shall be taken to prevent any proceedings from being continued in the Court in which the action was brought, where such action was commenced before the appointment of such clerk or bailiff. Actions by and against clerks and bailiffs commenced before appointment. 52 V. c. 12, s. 6.

93. Notwithstanding anything in this Act contained, a clerk or bailiff of a Division Court may be sued in the Court of an adjoining county, the place of sitting whereof is nearest to the residence of the defendant without the county in which he holds his office as clerk or bailiff; and upon a transcript of a judgment which may be recovered against any clerk or bailiff in such action being sent to and received by the clerk of the Court of any division adjoining the division for which the defendant was or is clerk or bailiff in the county in which the last named division is situate, with a certificate of the amount due on such judgment, as provided by section 223 of this Act, such proceedings for enforcing and collecting the judgment by way of execution and otherwise may be had and taken in the Division Court to which the transcript has been so sent by the officers thereof as may be had or taken for the like purpose upon a judgment regularly recovered in any Division Court. R. S. O. 1887, c. 51, s. 89. Clerk or bailiff may be sued in Court in adjoining county.

94. Any action, by or against a Judge or Junior Judge of a County Court, which is within the competence of a Division Court, may be brought in a Division Court of any county adjoining that in which the Judge or Junior Judge resides; and any action by or against a stipendiary magistrate, if the same is within the jurisdiction of any Division Court of his district, may be brought in any Division Court of any adjoining county or district. R. S. O. 1887, c. 51, s. 90. Action against County Judge or stipendiary magistrate

Trial may
by consent
be in any
division.

95. Notwithstanding anything in this Act contained, any action within the jurisdiction of the Division Courts may be entered, tried and finally disposed of by the consent of all parties in any Division Court. R. S. O. 1887, c. 51, s. 91.

Forward-
ing sum-
monses for
service in
other
divisions.

96. The clerk of any Division Court shall, when required, forward all summonses to the clerk of any other Division Court for service, and the clerk of any Division Court shall receive any summonses sent to him by any other Division Court clerk for service, and he shall hand the same to the bailiff for service, and when returned shall receive the same from the bailiff and return them to the clerk from whom he received them, and every clerk shall enter all such proceedings in a book to be kept by him for that purpose. R. S. O. 1887, c. 51, s. 92.

Notices
to be in
writing.

97. In all cases not already provided for, where, in any action or proceeding in a Division Court, it is necessary for any party thereto to give notice to any other party thereto or to the clerk of the Court such notice shall be in writing. R. S. O. 1887, c. 51, s. 93.

ENTRY OF CLAIM, SERVICE, ETC.

Plaintiff to
enter copy
of his
claim with
clerk.

98.—(1) The plaintiff shall enter with the clerk a copy (and, if necessary, copies) of his account, claim or demand in writing in detail (and in cases of tort, particulars of his demand) and each copy shall be numbered according to the order in which the copies are entered, and thereupon a summons shall be issued, bearing the number of the account, claim or demand on the margin thereof and corresponding in substance with such form as may be prescribed by the general rules or orders relating to Division Courts from time to time in force, according to the nature of the account, claim or demand, and on the trial of the cause no evidence shall be given by the plaintiff of any cause of action except such as is contained in the account, claim or demand so entered.

(2) In any action brought to recover a sum of money due on a promissory note, the note shall be filed with the

clerk before judgment, unless otherwise ordered, or unless the loss of the note be shown, or that it cannot for some other satisfactory reason be produced. R. S. O. 1887, c. 51, s. 94.

99. The plaintiff shall furnish the clerk with the particulars of his claim or demand, and the clerk shall annex the plaintiff's particulars to the summons, and he shall furnish copies thereof to the proper person to serve the same. Plaintiff to furnish particulars of claim to the clerk for service.
R. S. O. 1887, c. 51, s. 95.

100. The summons, with copy of the account or of the particulars of the claim or demand attached, shall be served ten days at least before the return day thereof. Summons to be served ten days before return day.
R. S. O. 1887, c. 51, s. 96.

101. In case any defendant resides outside of the county in which the action is brought, the summons shall be served on every such defendant fifteen days at least before the return day thereof. When summons to be served if defendant resides out of county. 52 V. c. 12, s. 8; 60 V. c. 3, s. 3.

102. There shall be endorsed upon every summons a notice informing the defendant that in any case in which an order may be made changing the place of trial, application must be made to the Judge within eight days after the day of service thereof (where the service is required to be ten days before the return), or within twelve days after the day of such service (where the service is required to be fifteen days or more before the return). Indorsement upon summons. R. S. O. 1887, c. 51, s. 98.

103. In case the amount of the account, claim or demand exceeds \$15, the service shall be personal on the defendant, and in case the amount does not exceed \$15, the service may be on the defendant, his wife, or servant, or some grown person being an inmate of the defendant's dwelling-house, or usual place of abode, trading or dealing. When service to be personal or otherwise. R. S. O. 1887, c. 51, s. 99; 52 V. c. 12, s. 9.

GENERAL PROVISIONS.

104. Where it is made to appear to the Judge upon affidavit that reasonable efforts have been made to effect per- Substitutional service.

sonal service of the summons upon the defendant, primary debtor or garnishee, and either that the summons has come to the knowledge of the defendant, primary debtor or garnishee, or that he wilfully evades service of the same, or has absconded, either before or after the issue of the summons, or is out of the Province of Ontario, but has in Ontario an office and an agent doing business on his behalf, the Judge may, by order, grant leave to the plaintiff to serve the summons in such manner, at such place, or upon such person for the defendant, primary debtor or garnishee, as to him may seem proper, and may grant leave to the plaintiff to proceed as if personal service had been effected, subject to such conditions as the Judge may impose. R. S. O. 1887, c. 51, s. 100; 51 V. c. 10, s. 1; 52 V. c. 12, s. 10.

Service of
process,
etc., on cor-
porations.

105.—(1) Every summons or process issued out of a Division Court against a corporation, firm or individual whose chief place of business is not within the Province, and all subsequent papers and proceedings in the action, or proceeding in which the summons or process has been issued, may be served on the agent of the corporation, firm or individual whose office or place of business as such agent is either within the division in which the summons or process issued, or is nearest thereto. R. S. O. 1887, c. 51, s. 101 (1); 52 V. c. 12, s. 11.

Interpreta-
tion
"agent."

(2) For the purposes of this section the word "agent" shall be held to include:

- (a) In the case of a railway company, a station-master having charge of a station belonging to the railway company;
- (b) In the case of a telegraph company, a person having charge of a telegraph office belonging to the telegraph company, and
- (c) In the case of an express company, a person having charge of an express office belonging to the express company. R. S. O. 1887, c. 51, s. 101 (2).

106. The postage on papers required to be served out of the division, and sent by mail for service, shall be costs in the cause. Postage. R. S. O. 1887, c. 51, s. 102.

107. Where there is no bailiff of the Court in which the action is brought, or when the bailiff has been suspended by order of the Judge, or where any summons, execution, subpoena, process or other document is required to be served or executed elsewhere than in the division in which the action is brought, it may, in the election of the party, be directed to be served and executed by the bailiff of the division in or near to which it is required to be executed, or by such other bailiff or person as the Judge, or clerk issuing the same, orders, and may, for that purpose, be transmitted by post, or otherwise, direct to such bailiff or person, without being sent to or through the clerk. How process, etc., may be executed at a distance. R. S. O. 1887, c. 51, s. 103.

108. In cases mentioned in the last preceding section it shall be the duty of the bailiff to serve and execute all summonses, executions, subpoenas, process and other documents, and make return thereof with reasonable diligence, and to pay over, on demand, all moneys by him levied or received thereon; and for neglect or default therein, in addition to any other remedy against the bailiff, he and his sureties shall be liable, on their covenant to the parties aggrieved, as if the summonses, executions, subpoenas, process and documents had issued from or related to some action in the Court of which he is bailiff. Duties of bailiff and liability of sureties. R. S. O. 1887, c. 51, s. 104.

109. The clerk shall prepare an affidavit of service of every summons issued out of his Court, or sent to him for service stating how the same were served, the day of service, and the distance the bailiff necessarily travelled to effect service, and the affidavit shall be annexed to or indorsed on the summons; but the Judge may require the bailiff to be sworn in his presence, and to answer such questions as may be put to him touching any service or mileage. Clerk to prepare affidavits of service, etc. R. S. O. 1887, c. 51, s. 105.

PARTNERS.

One or more persons jointly liable may be sued.

110. In case of a debt or demand against two or more persons, partners in trade or otherwise jointly liable, but residing in different divisions, or one or more of whom cannot be found, one or more of such persons may be served with process, and judgment may be obtained and execution issued against the person or persons served, notwithstanding others jointly liable have not been served or sued, reserving always to the person or persons against whom execution issues his or their right to demand contribution from any other person jointly liable with him. R. S. O. 1887, c. 51, s. 106.

Bailiff may seize property of firm on certificate of Judge.

111. Where judgment has been obtained against such partner, and the Judge certifies that the demand proved was strictly a partnership transaction, the bailiff, in order to satisfy the judgment and costs and charges thereon, may seize and sell the property of the firm, as well as that of the defendants who have been served. R. S. O. 1887, c. 51, s. 107.

ADDING PARTIES.

Adding party defendant, primary debtor or garnishee.

112. The following provisions shall apply to and in respect of any action brought in a Division Court:

1. The Judge may, at any time after action commenced, upon the application of either party, and upon such terms as may appear to him to be just, order that the name of any party who ought to have been joined in the action as a defendant, primary debtor or garnishee, shall be added as a party defendant, primary debtor or garnishee.

2. If it appears to the Judge, either before or at the trial of an action, that any party ought to be added as a party defendant, primary debtor or garnishee, in order that the Court may settle all rights and questions involved in the action, the Judge may order such party to be added, accordingly.

Service on parties added.

3. Every person whose name is so added as a defendant, primary debtor or garnishee, shall be served with a copy of

the summons, the original summons being first properly amended, and the proceedings against such added defendant, primary debtor or garnishee, shall be deemed to have been commenced from the date of the order making him a party defendant, primary debtor or garnishee; but if the application to add any party as a party defendant, primary debtor or garnishee be made at the trial, the Judge may make the order in a summary manner, and may dispense with the service of a copy of the summons if such defendant, primary debtor or garnishee, or his solicitor consents thereto, upon such terms as to costs or an adjournment of the trial, as to the Judge shall appear just. R. S. O. 1887, c. 51, s. 108 (1-3); 52 V. c. 12, s. 12.

4. Any two or more persons claiming, or being liable as co-partners, may sue or be sued in the name of the respective firms, if any. Where partners are sued in the name of their firm, the summons may be served on one or more of the partners, and, subject to the provisions in the next two subsections contained, such service shall be deemed good service upon the firm; but the affidavit of the service of the summons shall state the name of the partner served. Any party may, at any time before or after judgment, apply to the Judge for an order directing a statement to be furnished of the names of all the persons who are co-partners in any firm which is a party to the action by the firm named.

5. Where a judgment is against partners in the name of the firm, execution may issue in the manner following:—

- (a) Against any goods of the partners;
- (b) Against the goods of any person who has admitted in the notice of dispute or defence filed that he is a partner, or who has been adjudged a partner;
- (c) Against any person who has been served as a partner with a copy of the summons and who has failed to appear.

6. Upon the trial of an action against a firm, if the plaintiff is desirous of obtaining a judgment against the individual partners, other than the one served with a copy of

the summons, and in addition to his judgment against the firm, he may procure the addition of the remaining partners as defendants under sub-sections 1 and 3 of this section, and thereafter proceed against them in the action as in other cases. R. S. O. 1887, c. 51, s. 108 (4-6).

JUDGMENT BY DEFAULT WHERE SUMMONS SPECIALLY
ENDORSED.

In proceedings by special summons final judgment entered by the clerk when claim in whole or in part not disputed, etc.

113. In actions brought in a Division Court for the recovery of any debt or money demand, where the particulars of the plaintiff's claim, with reasonable certainty and detail, are endorsed on or attached to the summons, and a copy of the summons and particulars, with a notice in the form prescribed by the general rules or orders relating to Division Courts from time to time in force, annexed to or endorsed on such copy has been duly served, then, unless the defendant has left with the clerk, within eight days after the day of service (where the service is required to be ten days before the return), or within twelve days after the day of service (where the service is required to be fifteen days before the return) a notice to the effect that he disputes the claim, or some part, and how much thereof, final judgment may be entered by the clerk on the return of such summons, or at any time within one month thereafter for the amount claimed in such particulars, or so much thereof as has not been disputed, and execution may issue thereon at the instance of the plaintiff without prejudice to his right to recover for the remainder of his claim. R. S. O. 1887, c. 51, s. 109 (1); 56 V. c. 15, s. 3.

Summons, particulars and affidavit to be filed.

114.—(1) The final judgment so entered may be in the form prescribed by the general rules or orders relating to Division Courts from time to time in force, but no such judgment shall be so entered until the summons and particulars with an affidavit of the due service of both have been filed.

Judge may set aside judgment.

(2) The Judge may set aside such judgment, and permit the case to be tried, on sufficient grounds shown, on such

terms as to costs and otherwise as he thinks just. R. S. O. 1887, c. 51, s. 109 (2, 3).

115 When due proof is made by affidavit or otherwise of the service of a special summons issued under the preceding section of this Act, and of particulars of the plaintiff's claim or demand as required by the said section, and final judgment has not been entered under the provisions thereof, the Judge may, if the defendant does not, in person or by agent, appear in open Court, pursuant to and as required by the summons, give judgment against the defendant by default, without requiring proof of the plaintiff's claim or demand, and with the same consequences and effect as if the plaintiff had proved his claim or demand in open Court. R. S. O. 1887, c. 51, s. 110.

Judgment
by default
under s.
109, where
final judg-
ment not
entered.

116. In an action within the meaning of section 113 of this Act for the recovery of the sum of \$25, or upwards, the plaintiff in the action may, on an affidavit made by himself, or by any other person who swears positively to the debt or cause of action, verifying the cause of action, and stating that in his belief there is no defence to the action, concurrently with the service of the summons commencing the action, or at any subsequent time, serve the defendant with a notice of motion to show cause before the Judge of the Division Court in which the action is brought, why the plaintiff should not be at liberty to have final judgment entered in his favour by the clerk for the amount of the debt or money demand sought to be recovered in the action, together with interest, if any, and costs. A copy of the affidavit shall accompany the notice of motion. The Judge may thereupon, unless the defendant, by affidavit or otherwise, satisfy the Judge that he has a good defence to the action on the merits, or disclose such facts as may be deemed sufficient to entitle him to defend the action, make an order empowering the clerk to sign final judgment accordingly. 60 V. c. 14, s. 6.

Motion for
judgment.

(2) The application by the plaintiff for leave to have final judgment entered in his favour under the provisions of

this section, shall be made on notice returnable not less than two clear days after service.

(3) The defendant may show cause against the application by offering to bring into Court the amount sought to be recovered in the action, or by affidavit. In the affidavit he shall state whether the defence he alleges goes to the whole or to part only, and if so, to what part of the plaintiff's claim. And the Judge may, if he thinks fit, order the defendant to attend and be examined upon oath, or to produce any books or documents, or copies of, or extracts therefrom.

(4) In case it appears that the defence set up by the defendant applies only to a part of the plaintiff's claim, or that any part of his claim is admitted to be due, the plaintiff shall be entitled to have final judgment entered forthwith for such part of his claim as the defence does not apply to or as is admitted to be due, subject to such terms, if any, as to suspending execution, or the payment of any amount levied, or any part thereof, into Court by the bialiff, the taxation of costs, or otherwise, as the Judge may think fit; and the defendant may be allowed to defend as to the residue of the plaintiff's claim.

(5) If it appears to the Judge that any defendant has a good defence, or ought to be permitted to defend, and that any other defendant has not such defence, and ought not to be permitted to defend, the former may be permitted to defend, and the plaintiff shall be entitled to have final judgment entered against the latter, and may issue execution upon the judgment without prejudice to his right to proceed with his action against the former.

(6) Leave to defend may be given unconditionally, or subject to such terms as to giving security or otherwise, as the Judge may think fit. R. S. O. 1887, c. 51, s. 111 (2-6).

Leave to
dispute
claim at
any time
before
judgment.

117. The Judge at any time before judgment actually entered, although the time for giving the notice disputing the plaintiff's claim has expired, may, on sufficient grounds shown, and on such terms as he thinks just, grant leave to the

defendant to dispute the plaintiff's claim, in which case the requisite notice disputing the claim shall immediately be left with the clerk, and also sent to the plaintiff, by prepaid letter through the post or otherwise. R. S. O. 1887, c. 51, s. 112.

118. A defendant who has filed a notice of defence in any action may, by notice in writing to the clerk, at least six days before the sittings at which the same may be tried, withdraw such defence, and consent that judgment be entered against him for any amount, and the clerk shall immediately notify the plaintiff thereof by mail, and thereupon the plaintiff shall be entitled to have judgment entered by the clerk as by default for such amount, and the costs necessarily incurred. R. S. O. 1887, c. 51, s. 113.

119. In any case in which the defendant, primary debtor or garnishee has given the clerk notice that he disputes the plaintiff's claim, or any other notice of which the plaintiff should be informed before the trial, or in any case in which it has become the duty of the clerk to give notice to any party to a cause of any defence, admission, Judge's order or other matter, of which he should be notified before the trial, such notice shall show the place and time of the sittings of the Court at which the cause is to be heard. 52 V. c. 12, s. 25.

TRIAL.

120. In cases in which a trial is to be had, the defendant shall, on the day named in the summons, either in person or by some person on his behalf, appear in the Court to answer, and, on answer being made, the Judge shall, without further pleading or formal joinder of issue, proceed, in a summary way, to try the cause and give judgment; and in case satisfactory proof is not given to the Judge entitling either party to judgment, he may nonsuit the plaintiff; and the plaintiff may, before verdict in jury cases, and before judgment pronounced in other cases, insist on being nonsuited. R. S. O. 1887, c. 51, s. 114.

Order in
which
actions to
be tried.

121. The clerk shall place all actions in which the sum sought to be recovered exceeds \$100 at the foot of the trial list, and the other actions on the list and business of the Court shall be disposed of before entering upon the trial of any of the first mentioned actions, unless the Judge shall, for special reason or reasons, otherwise order; the Judge shall, in such cases, when no agreement not to appeal has been signed and filed, take down the evidence in writing, and shall leave the same with the clerk of the Court; but in the event of an application for a new trial it shall be forwarded to the Judge by the clerk for the purposes of such application. R. S. O. 1887, c. 51, s. 115.

Parties
may agree
not to
appeal

122. No appeal shall lie to the Court of Appeal if before the Court opens, or if without the intervention of the Judge before the commencement of the trial, there shall be filed with the clerk, in any case, an agreement in writing not to appeal, signed by both parties, or their solicitors or agents; and the Judge shall note in his minutes whether such agreement was so filed or not, and the minutes shall be conclusive evidence upon that point. R. S. O. 1887, c. 51, s. 116.

Proceed-
ings in case
defendant
does not
appear.

123. If on the day named in the summons the defendant does not appear, or sufficiently excuse his absence, or if he neglects to answer, the Judge, on proof of due service of the summons and copy of the plaintiff's account, claim or demand, may proceed to the hearing or trial of the cause on the part of the plaintiff only, and the order, verdict or judgment thereupon shall be final and absolute, and as valid as if both parties had attended; and, except in tort or trespass, in case of the personal service of the summons and of detailed particulars of the plaintiff's claim, the Judge may, in his discretion, give judgment without further proof. R. S. O. 1887, c. 51, s. 117.

Judge may
adjourn
hearing of
cause.

124. In case the Judge thinks it conducive to the ends of justice, he may adjourn the hearing of any cause in order to permit either party to summon witnesses or to produce further proof, or to serve or give any notice necessary to

enable the party to enter more fully into his case or defence, or for any other cause which the Judge thinks reasonable, upon such conditions as to the payment of costs and admission of evidence or other equitable terms, as to him seems just. R. S. O. 1887, c. 51, s. 118.

125. Where an action is being tried by a jury, the Judge, if he thinks it expedient for the interest of justice, ^{Postponement of jury trial.} may postpone or adjourn the trial for such time and upon such terms, if any, as he shall think fit. R. S. O. 1887, c. 51, s. 119.

126. Any person may appear at the trial or hearing of any cause, matter or proceeding as agent and advocate for any party to any such cause, matter or proceeding in the Division Courts, except where prohibited under the next section. ^{All persons empowered to act as agents or advocates.} R. S. O. 1887, c. 51, s. 120.

127. The Judge or acting Judge may, wherever in his opinion justice appears to require it, prevent any person from appearing at the trial or hearing of any cause, matter or proceeding in the Court, as agent and advocate for any party or parties to any such cause, matter or proceeding. ^{Judge may prevent any one from acting as agent or advocate in certain cases.} R. S. O. 1887, c. 51, s. 121.

TENDER OF PAYMENT OF MONEY IN COURT.

128. If the defendant in an action of debt or contract brought against him in a Division Court, desires to plead a tender before action brought, of a sum of money in full satisfaction of the plaintiff's claim, he may do so on filing his plea with the clerk of the Court before which he is summoned to appear, at least six days before the day appointed for the trial of the cause, and at the same time paying into Court the amount of the money mentioned in the plea; and notice of the plea and payment shall be forthwith communicated by the clerk of the Court to the plaintiff by post (on receiving the necessary postage), or by sending the same to his usual place of abode or business. ^{Plea of tender with payment of money into Court.} R. S. O. 1887, c. 51, s. 122.

Amount
tendered to
be paid to
plaintiff,
etc.

129. The said money shall be paid to the plaintiff, less \$1 to be paid over to the defendant for his trouble, in case the plaintiff does not further prosecute his action; and all proceedings in the action shall be stayed unless the plaintiff, within three days after the receipt of notice of the payment, signifies in writing to the clerk of the Court his intention to proceed for his demand, notwithstanding such plea; and in such case the action shall proceed accordingly. R. S. O. 1887, c. 51, s. 123.

Rules as to
costs where
plaintiff
proceeds
for balance

130. If after such tender and payment into Court the plaintiff proceeds with his action and the decision thereon is for the defendant, the plaintiff shall pay the defendant his costs, charges and expenses, to be awarded by the Court, and the amount thereof may be paid over to him out of the money so paid in with the said plea, or may be recovered from the plaintiff in the same manner as any other money payable under a judgment of the Court; but, if the decision be in favour of the plaintiff, the full amount of the money paid into Court as aforesaid shall be applied to the satisfaction of his claim, and a judgment may be pronounced against the defendant for the balance due and the costs of suit according to the usual practice of the Court in other cases. R. S. O. 1887, c. 51, s. 124.

Defendant
may pay
money into
Court.

131. The defendant may at any time, not less than six days before the day appointed for the trial, pay into Court such sum as he thinks a full satisfaction for the plaintiff's demand, together with the plaintiff's costs up to the time of such payment. R. S. O. 1887, c. 51, s. 125.

Clerk to
give notice
of payment
to plaintiff.

132. The clerk having received the necessary postage, shall forthwith send notice of the payment to the plaintiff by post or otherwise to his usual place of abode or of business, and the sum so paid shall be paid to the plaintiff, and all proceedings in the action stayed, unless within three days after the receipt of the notice the plaintiff signifies in writing to the clerk his intention to proceed for the remainder of the demand claimed, in which case the action shall proceed as if brought originally for such remainder only. R. S. O. 1887, c. 51, s. 126.

133. If the plaintiff recovers no further sum in the action than the sum paid into Court, the plaintiff shall pay the defendant all costs, charges and expenses incurred by him in the action after such payment, and such costs, charges and expenses shall be duly taxed, and may be recovered by the defendant by the same means as any other sum ordered to be paid by the Court. R. S. O. 1887, c. 51, s. 127.

Plaintiff to pay defendant's costs if no further sum recovered.

SET-OFF AND STATUTORY DEFENCE.

134. In case the defendant desires to avail himself of the law of set-off, or of the Statute of Limitations, or of any defence under any other statute having force of law in Ontario, he shall, at least six days before the trial or hearing, give notice thereof in writing to the plaintiff, or leave the same for him at his usual place of abode if within the division, or, if living without the division, shall deliver the same to the clerk of the Court in which the action is to be tried; and in case of a set-off the particulars thereof shall be delivered to the clerk and shall accompany the notice to be given as aforesaid to the plaintiff. R. S. O. 1887, c. 51, s. 128.

Defendant to give notice of set-off or other statutory defence.

135. No evidence of set-off shall be given by the defendant except such as is contained in the particulars of set-off delivered. R. S. O. 1887, c. 51, s. 129.

Evidence of set-off.

136. If the set-off, proved to the satisfaction of the Judge, exceeds the amount shown to be due to the plaintiff, the plaintiff shall be nonsuited or the defendant may elect to have judgment for the excess, provided the excess be an amount within the jurisdiction of the Court, and if the excess be greater in amount than the jurisdiction of the Court the Judge may adjudicate that an amount of the set-off equal to the amount shown to be due to the plaintiff be satisfied by the claim, but the adjudication shall be no bar to the recovery by the defendant in a subsequent action for the residue of the set-off. R. S. O. 1887, c. 51, s. 130.

Provisions if set-off exceeds amount due to plaintiff.

WITNESSES AND EVIDENCE—SUBPŒNAS.

Parties
may obtain
subpœnas
from clerk.

137. Any of the parties to an action may obtain, from the clerk of any Division Court in the county, a subpœna with or without a clause for the production of books, papers and writings, requiring any witness, resident within the Province or served with the subpœna therein, to attend at a specified Court or place before the Judge, or any arbitrator appointed by him under the provision hereinafter contained, and the clerk, when requested by any party to an action, or his agent, shall give copies of such subpœna. R. S. O. 1887, c. 51, s. 131.

Service of
subpœna,
by whom
made.

138. Any number of names may be inserted in a subpœna, and service thereof may be made by any literate person, and proof of the due service thereof, together with the tender of payment of expenses, may be made by affidavit, and proof of service may be received by the Judge, either orally or by affidavit. R. S. O. 1887, c. 51, s. 132.

Penalty for
disobeying
subpœna or
refusing to
be sworn.

139. Every person served with a copy of a subpœna either personally or at his usual place of abode, and to whom at the same time a tender of payment of his lawful expenses is made, who refuses or neglects without sufficient cause to obey the subpœna, and also every person in Court called upon to give evidence, who refuses to be sworn (or affirm where affirmation is by law allowed) or to give evidence, shall pay such fine not exceeding \$8 as the Judge may impose, and shall, by verbal or written order of the Judge, be, in addition, liable to imprisonment for any time not exceeding ten days; and the fine shall be levied and collected with costs, in the same manner as fines imposed on jurymen for non-attendance, and the whole or any part of the fine, in the discretion of the Judge, after deducting the costs, shall be applicable toward indemnifying the party injured by such refusal or neglect, and the remainder thereof shall form part of the Consolidated Revenue Fund. R. S. O. 1887, c. 51, s. 133.

140. Any person served with such subpcena, who is resident in Ontario, but out of the county in which the Division Court is situate, shall be entitled to be paid witness fees and mileage according to the County Court tariff. R. S. O. 1887, c. 51, s. 134.

Expenses to be paid witness out of county.

[The rate of allowance to witnesses according to the County Court tariff will be found printed with the Division Court tariff rates at the end of this volume.]

COMMISSIONS TO TAKE EVIDENCE.

141. In case the plaintiff or defendant in an action in a Division Court is desirous of having at the trial thereof the testimony of a person residing without the limits of the Province, the Judge of the County Court of the county wherein the action is pending, may, upon the application of the plaintiff or defendant, and upon hearing the parties, order the issue of a commission out of and under the seal of the Division Court to a Commissioner to take the examination of such person. R. S. O. 1887, c. 51, s. 135; 52 V. c. 12, s. 13.

Power to issue commissions to take evidence.

142. No order shall be made for the issue of such commission for the taking of the evidence of the person applying therefor, or any person in his employment, unless in the opinion of the Judge a saving of expense will be caused thereby, or unless it is clearly made to appear that the person is aged, infirm, or unable from sickness to appear as a witness. R. S. O. 1887, c. 51, s. 136.

When commissions to take evidence of applicant, etc., may be granted.

143. In case it be made to appear to the Judge that a material and necessary witness residing within the Province is sick, aged, or infirm, or that he is about to leave the Province, and that his attendance at Court as a witness cannot by reason thereof be procured, the Judge may make an order appointing a suitable person to take the evidence of the said person. A copy of the order, with two days' notice of the time and place of the examination, shall be served upon the opposite party, his solicitor or agent, who may appear, and cross-examine the witness. The evidence shall be

Examination of witnesses whose attendance at trial cannot be obtained.

taken on oath, and shall be reduced to writing, and signed by the witnesses, and shall be transmitted to the clerk of the Court, and shall be by him kept on file, and may be used upon the trial saving all just exceptions. The costs of the order shall be in the discretion of the Judge, and the reasonable charge of the examiner (to be fixed by the Judge) shall, in the first instance, be paid by the party obtaining the order, as in the case of witness fees, and shall thereafter be paid as the Judge may order. R. S. O. 1887, c. 51, s. 137.

Examina-
tion of
witness
residing at
a distance
from place
of trial.

144.—(1) An order may also be obtained for the examination of a witness who resides in a remote part of the Province, and at a great distance from the place of trial, if it be clearly made to appear that his attendance cannot be procured, or that the expense of his attendance would be out of proportion to the amount involved in the action, or would be so great that the party desiring his attendance should not, under the circumstances, be required to incur the same; and the proceedings thereon, and the order as to costs, shall be the same as in the case of an order in the next preceding section mentioned.

(2) Any person appointed to take an examination, under this and the next preceding section, shall have authority to administer an oath to the person to be examined. R. S. O. 1887, c. 51, s. 139.

Rules made
applicable
to com-
missions.

145. The provisions of the rules of the Supreme Court of Judicature, so far as the same are applicable, shall apply to every commission issued under the authority of this Act. R. S. O. 1887, c. 51, s. 139.

Return of
commis-
sion to take
evidence.

146. The commission, with the evidence taken thereunder and the papers therewith, shall forthwith be returned to the clerk of the Division Court in which the action to which the same relates is pending. 52 V. c. 12, s. 14.

Costs of
commis-
sion.

147. The costs of the issue, transmission, execution and return of any such commission shall be in the discretion of the Judge of the Court in which the action is pending, who may allow a sum in gross therefor, and the costs may

be added to any other costs to be paid to the party entitled thereto, and may be recovered by the party entitled thereto in like manner as the ordinary costs of the action are recoverable by the practice of the Division Courts. R. S. O. 1887, c. 51, s. 141; 52 V. c. 12, s. 15.

BOOKS OF ACCOUNT, AFFIDAVITS, ETC., AS EVIDENCE.

148. In an action for a debt or demand, not being for tort, and being under \$25, the Judge, on being satisfied of their general correctness, may receive the plaintiff's books as evidence, or in case of a defence of set-off or of payment, so far as the same extends to \$25, may receive the defendant's books as evidence, and the Judge may also receive as evidence the affidavit or affirmation of any party or witness in the action resident without the limits of the county, but, before pronouncing judgment, the Judge may require such witness or any party in a cause to answer upon oath or affirmation any interrogatories that may be filed in the action. R. S. O. 1887, c. 51, s. 142; 60 V. c. 3, s. 3.

Judge may receive in evidence plaintiff's or defendant's books of account.

149. All affidavits to be used in Division Courts or before any of the Judges thereof, may be sworn before a County Judge or before the clerk or deputy clerk of a Division Court, or before a Judge, notary public or commissioner for taking affidavits in the High Court. R. S. O. 1887, c. 51, s. 143.

Affidavits may be sworn before a Judge.

JUDGE'S DECISION.

150. The Judge, in any case heard before him shall, in Court, openly, and as soon as may be after the hearing, pronounce his decision; but if he is not then prepared to pronounce a decision he may postpone it until it is convenient for him to give the same, when he shall forthwith send the same to the clerk of the Court, who shall, upon the receipt thereof by him, forthwith enter the judgment and by registered letter notify the parties to the suit of the same; and such judgment shall be as effectual as if rendered in Court at the trial. R. S. O. 1887, c. 51, s. 144; 57 V. c. 23, s. 4.

Judge may give judgment instantly, or postpone judgment.

Judge may direct times and proportions in which judgment shall be paid.

151. The Judge may order the time or times and the proportions in which any sum and costs recovered by judgment of the Court shall be paid, reference being had to the day on which the summons was served, but unless otherwise ordered, no execution shall issue on any such judgment within fifteen days after the entering of such judgment, and at the request of the party entitled thereto, the Judge may order the same to be paid into Court. R. S. O. 1887, c. 51, s. 115, part.

New trial.

152.—(1) The Judge, upon the application of either party within fourteen days after the trial, or after the mailing of the notice of the decision to the party applying where the decision is not given at the trial, and upon good grounds being shown, may grant a new trial upon such terms as he thinks reasonable, and in the meantime may stay proceedings. R. S. O. 1887, c. 51, s. 145, part; 52 V. c. 12, s. 16.

Judgment on application for new trial.

(2) Upon an application for a new trial the Judge, instead of granting a new trial, may pronounce the judgment which in his opinion ought to have been pronounced at the trial, and may order judgment to be entered accordingly. R. S. O. 1887, c. 51, s. 146.

Execution not to be postponed for more than 50 days.

153. Except in cases where a new trial is granted, the issue of execution shall not be postponed for more than fifty days from service of the summons without the consent of the party entitled to the same, but in case it at any time appears to the satisfaction of the Judge, by affidavit, affirmation or otherwise, that a defendant is unable, from sickness or other sufficient cause, to pay and discharge the debt, or damages recovered against him, or any instalment thereof, ordered to be paid as aforesaid, the Judge may suspend or stay any judgment, order or execution given, made or issued in the action, for such time and on such terms as he thinks fit, and so from time to time until it appears by the like proof that the temporary cause of disability has ceased. R. S. O. 1887, c. 51, s. 147.

APPEALS.

154.—(1) In case a party to a cause or any of the parties to garnishee proceedings under this Act, wherein the sum in dispute upon the appeal exceeds \$100 exclusive of costs, is dissatisfied with the decision of the Judge, upon an application for a new trial, he may appeal to a Divisional Court of the High Court of Justice, and in such case the proceedings in and about the appeal shall be the same as on an appeal from a County Court, except where otherwise provided by this Act, and the terms "party to a cause" and "appellant" in this section and hereafter used shall have the meaning attached thereto in and by section 50 of The County Courts Act, and shall also include any party to garnishee proceedings and any party added by order of the Judge. R. S. O. 1887, c. 51, s. 148 (1); 51 V. c. 10, s. 2; 58 V. c. 13, s. 47 (1), part.

Appeal to High Court of Justice.

Rev. Stat. c. 55.

(2) An appeal shall lie to the Divisional Court of the High Court of Justice from the decision of a Division Court Judge upon an application for a new trial in all actions in which the parties consent to an appeal, and in interpleader, where the money claimed, or the value of the goods or chattels claimed or of the proceeds thereof, exceeds \$100, or where the damages claimed by or awarded to either party against the other or against the bailiff, exceed the sum of \$60. R. S. O. 1887, c. 51, s. 148 (2); 58 V. c. 13, s. 47 (1), part.

Appeal in interpleader proceedings.

155. Where in any Division Court suit or proceeding a decision is given, which in effect or in terms renders invalid any general assessment made by a mutual insurance company, such decision shall be appealable, notwithstanding the sum in dispute upon the appeal is less than \$100, and all the provisions contained in sections 154 to 159, both inclusive, of this Act shall apply to such appeal. 60 V. c. 36, s. 138 (2).

Appeals affecting assessment made by mutual insurance company.

156. Upon an application for a new trial in any cause wherein either party may appeal, each party shall leave with

Agent for service.

the Judge by whom the application is heard, a memorandum in writing of the name of some person resident within the county town of the county or united counties in which the cause was tried, with his place of abode, upon whom the notice of appeal, and all other papers thereafter requiring service, may be served for him, and service upon such person, or, in his absence, at his place of abode, shall be sufficient service thereof; and, in the event of failure to leave such memorandum by either party, all papers requiring service upon him may be served upon the clerk of the Division Court where the trial was had, or left at his office, for the person so failing to leave such memorandum, and such service shall be good service; the clerk shall, in such case, forthwith mail, by registered letter, all such papers so served upon him to the person entitled to the same. R. S. O. 1887, c. 51, s. 150.

Evidence,
etc., to be
certified.

157. The clerk of the Court in which the action or proceeding is pending, shall, at the request of the appellant, his counsel, solicitor, or agent, furnish a duly certified copy of the summons with all notices indorsed thereon, the claim, and any notice or notices of defence, and of the evidence and all objections and exceptions thereto, and of all motions or orders made, granted, or refused therein, together with such notes of the Judge's charge as have been made, the judgment or decision when in writing, or the notes thereof, and all affidavits filed or used in the cause, together with all other papers filed in the cause affecting the questions raised by the appeal; the clerk shall also furnish to the respondent, when required so to do, a duplicate copy of the proceedings so furnished to the appellant, or such portion thereof as may be required by him, and for every copy he shall be entitled to receive the sum of five cents per folio of one hundred words. R. S. O. 1887, c. 51, s. 151; 58 V. c. 13, s. 47 (3).

Procedure
upon ap-
peal from
Division
Court.

158. The appellant shall, within two weeks after the date of the decision complained of, or within such other time as the Judge may by order in that behalf provide, file the said certified copy with the proper officer of the High Court, and shall thereupon forthwith set down the cause for argu-

ment at the first sittings of a Divisional Court which commences after the expiration of one month from the decision complained of, and shall give notice thereof and of the appeal and of the grounds thereof, to the respondent, his solicitor or agent, at least seven days before the commencement of such sittings; and the Divisional Court shall have power to dismiss the appeal or to give any judgment and make any order which ought to have been made, and shall give such order or direction to the Court below touching the decision or judgment to be given in the matter as the law requires, and shall also award costs in its discretion, which costs shall be certified to and form part of the judgment of the Court below, and upon receipt of such order, direction and certificate, the Court below shall proceed in accordance therewith. 58 V. c. 13, s. 47 (4).

159. The costs taxable, as between party and party, ^{Taxable costs on} upon or connected with any appeal shall be the actual disbursements and no greater amount over and above actual disbursements than \$15, inclusive of counsel fee; the costs of such appeal, as between solicitor and client, shall be taxable on the County Court scale. R. S. O. 1887, c. 51, s. 153; 58 V. c. 13, s. 47 (5).

JURIES.

160. Either party may require a jury in tort or replevin where the sum or the value of the goods sought to be recovered exceeds \$20, and in all other cases where the amount sought to be recovered exceeds \$30. R. S. O. 1887, c. 51, s. 154. ^{When a jury may be required}

161.—(1) Either party to an interpleader issue in a Division Court may require a jury to be summoned to try the issue, and in such cases he shall, within five days after the day of service of the summons on him, give to the clerk or leave at his office notice in writing, requiring a jury, and shall at the same time deposit with the clerk towards the costs in the cause, the proper fees for the expenses attending the summoning of the jury, and thereupon a jury shall be ^{Right to jury in interpleader}

summoned according to the provisions of this Act. R. S. O. 1887, c. 51, s. 155 (1); 57 V. c. 23, s. 5.

(2) Sections 121, 122 and 214, shall extend and apply to all interpleader issues and other actions mentioned in subsection 2 of section 154. R. S. O. 1887, c. 51, s. 155 (2).

Parties to
give notice
to clerk if
they re-
quire a jury

Provido.

162. In case the plaintiff requires a jury to be summoned to try the action, he shall give notice thereof in writing to the clerk one week before the sitting of the Court at which the case is to be tried, and shall at the same time deposit with the clerk towards the costs in the cause the proper fees for the expenses attending the summoning of the jury; and in case the defendant requires a jury, he shall, within five days after the day of service of the summons on him, give to the clerk or leave at his office the like notice in writing, and shall at the same time deposit with the clerk the proper fees as aforesaid; and thereupon, in either of such cases, a jury shall be summoned according to the provisions hereinafter contained. Provided, however, that in any case transferred from one Division Court to another under section 91 of this Act, either plaintiff or defendant may require a jury to be summoned by giving to the clerk of the Court to which such case has been transferred, or leaving at his office three clear days before the sittings of the Court at which the case is to be tried, a notice requiring a jury to be summoned, and by depositing with the clerk toward the costs in the cause, the proper fees for the expenses of summoning the jury. R. S. O. 1887, c. 51, s. 156; 57 V. c. 23, s. 6; 60 V. c. 14, s. 8.

Who may
be jurors.
Rev. Stat.
c. 61.

163. Unless exempted by The Jurors' Act every person whose name appears on the last published voters' list of any municipality, partly or wholly situate within the limits of any Division Court, and who resides within the division, and whose name is marked "J," as provided in section 23 of the said Act, shall be liable to serve as a juror for the Division Court in such division. 52 V. c. 12, s. 17.

164. The jurors to be summoned to serve at any Division Court shall be residents of the said division, and shall be taken from the last published voters' lists of the municipalities, partly or wholly within the division, and shall be summoned in rotation, beginning with the first of such persons in such voters' lists who resides within the said division, and whose name is marked "J," as provided in the preceding section, and if there be more than one municipality partly or wholly in the division, beginning with the voters' list for the municipality within which the Court is held, and then proceeding to that one of the other voters' lists which contains the greatest number of such persons' names, and so on until all the lists have been gone through, after which they may be gone through again in the same order.

Jurors,
how
selected
and sum-
moned.

(2) If at any time it shall appear to the County Judge that the cost of summoning a jury is excessive, by reason of the residences of the persons liable to be selected in the ordinary course being in a distant portion of the division, the County Judge may order the clerk of the Division Court to commence at the first name marked "J," as before provided, upon the voters' list of any municipality partly or wholly within the division. 52 V. c. 12, s. 18.

165. The clerk of every municipality shall furnish each Division Court clerk within whose division the said municipality is partly or wholly situate, with a correct copy of the voters' list of the said municipality immediately after the publication of the same in each year; and after a new voters' list is furnished to him the Division Court clerk shall take names of jurors therefrom, beginning as nearly as may be at the part of the list corresponding to the place where he left off in the previous list. 52 V. c. 12, s. 13.

clerk of
municipal-
ity to
furnish
Division
Court clerk
with copy
of voters'
list.

166. For the trial of actions required to be tried by or before a jury at any session of a Division Court, the clerk of the Court shall cause not less than twelve of the persons liable to serve as jurors to be summoned to attend at such session at the time and place to be mentioned in the summons, and the summons shall be served at least three days

Summon-
ing jurors.

before the Court, either personally, or by leaving the same with a grown up person at the residence of the juror, and the clerk shall issue a summons and also twelve copies thereof for service on said jurors, which summons shall be returned to the clerk with the service thereof duly verified by the oath of the bailiff serving the same. R. S. O. 1887, c. 51, s. 160; 52 V. c. 12, s. 30.

Parties
entitled to
challenge.

167. Either of the parties to a cause shall be entitled to his lawful challenge against any of the jurors, in like manner as in other Courts. R. S. O. 1887, c. 51, s. 161.

Penalty on
jurors
disobeying
summons.

168. Any jurymen who, after being duly summoned for that purpose, wilfully neglects or refuses to attend the Court, in obedience to the summons, shall be liable to a fine in the discretion of the Judge, not exceeding \$4, which fine shall be levied and collected with costs, by the same process as any debt or judgment recovered in the said Court, and shall form part of the Consolidated Revenue Fund. R. S. O. 1887, c. 51, s. 162.

Proceed-
ings
against
clerk of
municipality
for
refusing to
furnish
copy of
voters'
list.

169. If any clerk of a municipality, for six days after demand in writing, neglects or refuses to furnish the clerk of a Division Court, within the limits of which the municipality for which he is clerk is partly or wholly situate, with a correct copy of the voters' list as provided in section 165 of this Act, the clerk of the Division Court may issue a summons to be personally served on the said clerk of the municipality, three days at least before the sitting of the Court, requiring him to appear at the then next sitting of the Court, to show cause why he refused or neglected to comply with the provisions of the said section. 52 V. c. 12, s. 21.

Judge may
fine clerk
of municipality
for breach of
duty.

170. Upon proof of the service of the summons, the Judge may, in a summary manner, inquire into the neglect or refusal, or may give further time, and may impose such fine upon the clerk of the municipality, not exceeding \$20, as he deems just, and may also make such order for the payment by the clerk of the municipality of the costs of the proceedings as to the said Judge seems meet; and all orders

made by the Judge for the payment of a fine or costs shall be enforced against the clerk of the municipality by such means as are provided for enforcing judgments in the Division Courts. R. S. O. 1887, c. 51, s. 165; 52 V. c. 12, s. 22.

171. The causes to be heard by the Judge alone shall be set down for hearing in a separate list from the list of causes to be tried by a jury, which two lists shall be severally called "The Judge's List," and "The Jury List," and the causes shall be set down in the lists in the order in which they were in the first instance entered with the clerk. The "Jury List" shall be the first disposed of, and then "The Judge's List," except where the Judge sees sufficient cause for proceeding differently. R. S. O. 1887, c. 51, s. 166.

172. Five jurors shall be empanelled and sworn to do justice between the parties whose cause they are required to try, according to the best of their skill and ability, and to give a true verdict according to the evidence; and the verdict of every jury shall be unanimous. R. S. O. 1887, c. 51, s. 167, part.

173. In the event of the panel being exhausted before a jury shall be obtained, the Judge may direct the clerk to summon from the body of the Court a sufficient number of disinterested persons to make up a full jury, and any person so summoned may, saving all lawful exceptions and rights of challenge, sit and act as a juror as fully as though he had been regularly summoned. R. S. O. 1887, c. 51, s. 167, part.

174. In case the Judge before whom an action is brought thinks it proper to have any fact controverted in the cause tried by a jury, the clerk shall instantly return a jury of five persons present, to try such fact; and the Judge may give judgment on the verdict of the jury or grant a new trial, upon the application of either party, in the same way and under similar circumstances as new trials are granted in other cases on verdicts of juries. Each juror so called and sworn shall be paid the sum of ten cents, and the moneys so paid shall be taxed as costs in the cause. This section shall

extend and apply to the trial of an interpleader issue. R. S. O. 1887, c. 51, s. 168; 57 V. c. 29, s. 7.

Judge may
discharge
jury not
agreeing,
etc.

175. If in any case the Judge is satisfied that a jury, after having been out a reasonable time, cannot agree upon their verdict, he may discharge them, and adjourn the cause until the next Court, and order the clerk to summon a new jury for the next sitting of the Court for that division, unless the parties consent that the Judge may render judgment on the evidence already taken, in which case he may give judgment accordingly. R. S. O. 1887, c. 51, s. 169.

Fees for
jury fund.

176. There shall be paid to the clerk of the Division Court, in addition to all costs or jury fees now by law payable, on every action entered where the claim exceeds \$20 but does not exceed \$60, three cents; where the claim exceeds \$60, but does not exceed \$100, six cents; and where the claim exceeds 100, twenty-five cents; and the same shall be taxed and allowed as costs in the cause; and, on or before the 15th day of January in every year, every clerk shall return to the treasurer of the county a statement, under oath, showing the number of actions originally entered in his Court during the year previous, in which the claim exceeded \$20 but did not exceed \$60, the number in which the claim exceeded \$60, but did not exceed \$100, and the number in which the claim exceeded \$100; and he shall, with the statement, pay over to the treasurer the sum of three cents on every action so entered where the claim exceeded \$20 but did not exceed \$60; the sum of six cents on every action where the claim exceeded \$60, but did not exceed \$100; and the sum of twenty-five cents on every action where the claim exceeded \$100, together with all other moneys received by him for jurors' fees during the year; and the treasurer shall keep an account of all moneys so received by him under the head of "Division Court Jury Fund." R. S. O. 1887, c. 51, s. 170.

Return in
cities
forming
separate
divisions.

177. In every city which includes one or more entire divisions and no other fraction of a division the clerk shall make the return and payment, provided for by the next pre-

ceding section, to the treasurer of such city, who shall keep an account of such moneys in the same way as is provided in the case of county treasurers, and shall, on the presentation of the certificate of the Judge, forthwith repay to the clerk of the Court the jurors' fees paid by him in the same manner as is hereinafter provided in the case of county treasurers. R. S. O. 1887, c. 51, s. 171.

[The same returns are exacted of the clerk under this provision as are required under section 170. Too much stress cannot be laid on the necessity of this, as of all other returns, being duly made.]

178. The clerk of every Division Court shall pay to ^{Fees of jurors.} every person who has been summoned as a juror, and who attends during the sittings of the Court for which he has been summoned, and who does not attend as a witness in any cause, or as a litigant in his own behalf, the sum of \$1; and having so paid the same, except in the cases in the next preceding section provided for, the presiding Judge shall so certify to the treasurer of the county, and shall deliver the certificate to the clerk, and the treasurer of the county shall, upon the presentation of the certificate to him, forthwith pay to the clerk, or his order, the amount which the clerk appears, by the certificate, to have paid the jurors as aforesaid; in the case of cities, other than those provided for by the next preceding section, and towns separated from the county, the amounts paid in by the clerks of the Courts in such cities and towns, and the amounts paid in by the county treasurer to the clerks of such Courts for jury fees, shall be taken into account in settling the proportion of the charges to be paid by the city or town towards the costs of administration of justice. R. S. O. 1887, c. 51, s. 172.

PROCEEDINGS TO GARNISH DEBTS.

179. Subject to the provisions of the next section, ^{Garnish-} when a debt or money demand of the proper competence ^{ment of} of debts, the Division Court, and not being a claim strictly for damages, is due and owing to one party from another party,

either on a judgment of a Division Court or otherwise, and a debt is due or owing to the debtor from any other party, the party to whom such first mentioned debt or money demand is so due and owing (hereinafter designated the primary creditor), may attach and recover in the manner herein provided any debt due or owing his debtor (hereinafter designated the primary debtor), from any other party (hereinafter designated the garnishee), or sufficient to satisfy the claim of the primary creditor, subject always to the rights of other parties to the debts owing from such garnishee. R. S. O. 1887, c. 51, s. 173.

Debts due for wages not to be attached, except as to excess over \$25.

180. No debt due or accruing to a mechanic, workman, labourer, servant, clerk, or employee, for, or in respect of, his wages or salary, shall be liable to seizure or attachment under this Act, or any other Act relating to the attachment or garnishment of debts, unless the debt exceeds the sum of \$25, and then only to the extent of the excess. R. S. O. 1887, c. 51, s. 174. See also c. 156, s. 7.

Saving clause as to certain debts.

181. Nothing in the next preceding section contained shall apply to any case where the debt has been contracted for board or lodging, and in the opinion of the Judge, the exemption of \$25 is not necessary for the support and maintenance of the debtor's family, or where the debtor is an unmarried person, having no family depending upon him for support, and the debt was contracted on or before the 23rd day of March, 1889. R. S. O. 1887, c. 51, s. 175; 52 V. c. 12, s. 23.

Memorandum on garnishee summons.

182.—(1) In all cases under the provisions of sections 186 and 190 of this Act where the debt sought to be garnished is for wages or salary, there shall be upon, or annexed to the summons served on the garnishee, a memorandum showing the residence of the primary debtor and the nature of his occupation in the service of the garnishee at the time of the issuing of the summons (if then in such service), and also stating whether the debt alleged or adjudged to be due by the primary debtor to the primary creditor was or was not incurred for board or lodging, and in the absence

of such last mentioned statement the said debt may be presumed by the garnishee not to have been incurred for board or lodging. R. S. O. 1887, c. 51, s. 177.

(2) If the debt is alleged or adjudged to be due by an unmarried person having no family depending on him for support, a statement to that effect shall be upon or annexed to the summons served on the garnishee, and in the absence of such statement, such unmarried person may be presumed by the garnishee to have a family depending on him for support.

WHERE THE CREDITOR'S CLAIM IS A JUDGMENT.

183. After judgment has been recovered in a Division Court, application may be made to a Judge of the Court, by or on behalf of the primary creditor, on affidavit that such judgment was recovered, and when, and that the whole, or some part, and how much, thereof remains unsatisfied, and that the deponent has reason to believe, and does believe, that some one or more parties (naming them, or stating that he is unable to name them) is or are within this Province, and is or are indebted to the primary debtor, for an attaching order (which the Judge is hereby authorized to make), to the effect that all debts owing to the primary debtor, whether due or not due, be attached to satisfy the judgment; which order may be in the form prescribed by the General Rules or Orders from time to time in force relating to Division Courts. R. S. O. 1887, c. 51, s. 178.

Attaching
order to be
granted on
judgment.

184. The service of the order on a garnishee shall have the effect (subject to the rights of other parties), of attaching and binding in his hands all debts then owing from him to the primary debtor, or sufficient thereof to satisfy the judgment, and a payment by the garnishee into the Court, or to the primary creditor, of the debt so attached, to the extent unsatisfied on the judgment shall be a discharge to the extent of the debt owing from the garnishee to the primary debtor. R. S. O. 1887, c. 51, s. 179.

Service
thereof to
bind all
debts.

Payment
to any but
primary
creditor
void.

185. Any payment by the garnishee, after service on him of the order, to any one other than the primary creditor, or into Court, to satisfy the judgment, shall, to the extent of the primary creditor's claim, be void; and the garnishee shall be liable to pay the same again, to the extent of the primary creditor's claim, to satisfy the judgment, unless the Judge otherwise orders. R. S. O. 1887, c. 51, s. 180.

Primary
creditor
may
summon
garnishee,
etc.

186. Whether such attaching order is or is not made, the primary creditor may cause to be sued out of the Division Court for the division in which the garnishee, or one or more of them, if there be joint garnishees, resides or carries on business, a summons in the form prescribed by the general rules or orders, from time to time in force, relating to Division Courts, upon or annexed to which shall be a memorandum showing the names of the parties as designated in the judgment, the date when, and the Court in which, it was recovered, and the amount unsatisfied; which summons shall be returnable either at any ordinary sittings of the Court, or at such other time and place (to be named therein) as the Judge may permit or appoint, either by a general order for the disposal of such matters or otherwise. R. S. O. 1887, c. 51, s. 181.

Service on
corporation
whose head
office is
not in the
Province.

187. In proceedings under the preceding section, where the garnishees are likewise a body corporate, not having their chief place of business within the Province, then the summons mentioned in said last mentioned section shall be issued from the Division Court in which the judgment has been recovered, and shall be served upon the agent of the body corporate, whose office as such agent is either within the division in which the judgment has been recovered, or is nearest thereto. R. S. O. 1887, c. 51, s. 182.

Mode of
service.

188. A copy of the summons and memorandum shall be duly served on the garnishee, or, if there be joint garnishees, then on such of them as are within the reach of the process, at the time and in the manner required for the service of summonses in ordinary actions for corresponding

amounts, and also on the primary debtor, if thought advisable, or if required by the Judge. R. S. O. 1887, c. 51, s. 183.

189. At the hearing of the summons or at any adjourned hearing on sufficient proof of the amount owing by the garnishee to the primary debtor, and no sufficient cause appearing why it should not be paid and applied in satisfaction of the judgment, the Judge may give judgment against the garnishee (which judgment may be in the form prescribed by the general rules or orders from time to time in force relating to Division Courts), for the amount so owing from him, or sufficient thereof to satisfy the judgment; and execution against the garnishee to levy the same may issue thereon as of course, if due, or when and as it becomes due, or at such later period as the Judge may order, which execution may be according to the form prescribed as aforesaid. R. S. O. 1887, c. 51, s. 184.

Judgment
at hearing.

WHERE THE PRIMARY CREDITOR'S CLAIM NOT A JUDGMENT.

190.—(1) Where judgment has not been recovered for the claim of the primary creditor, he may cause a summons in the form prescribed by the general rules or orders from time to time in force relating to Division Courts, to be issued out of the Division Court of the division in which the garnishee, or one or more of them, if there be joint garnishees, live or carry on business, upon or annexed to which shall be a memorandum, showing the names of the primary creditor, the primary debtor, and of the garnishee, and the particulars of the claim of the primary creditor, with reasonable certainty and detail; which summons shall be returnable as required by section 186 of this Act, in respect to the summonses therein mentioned.

Where no
judgment,
summons
on gar-
nishee, etc.,
to issue.

(2) In the event of the garnishees being a body corporate not having their chief place of business within the Province, then the summons shall be issued out of the Division Court for the division in which the cause of action arose, and shall be served upon the agent of the body corporate, whose office, as such agent, is nearest to the place where the cause of action arose.

Where gar-
nishees are
corpora-
tion out of
Province.

Who may
be deemed
agent.

(3) Every person who within Ontario transacts or carries on any business of, or business for such body corporate, shall for the purpose of this section and of section 187 be deemed the agent thereof. R. S. O. 1887, c. 51, s. 185.

Service on
garnishees.

191. A copy of the summons and memorandum shall be duly served on the garnishee, or if there be joint garnishees, then on such of them as are within reach of the process, at the time and in the manner required for service in ordinary cases; and also, if practicable, on the primary debtor, unless the Judge for sufficient reasons dispenses therewith. R. S. O. 1887, c. 51, s. 186.

Judgment
in such
case.

192.—(1) If in such case the primary debtor has been duly served with a copy of the summons and memorandum, judgment (in the usual form in other cases) may be given against him at the hearing for the primary creditor, for the whole, or such part of the claim as is sufficiently proved, and execution may afterwards issue thereon as in other cases; and whether such judgment is or is not given, the Judge, on sufficient proof of the debt due and owing from the primary debtor, and also of the amount owing to him from the garnishee, may then, or at any adjourned hearing, give judgment against the garnishee (which may be according to the form prescribed as aforesaid) for the amount so found due from the garnishee, to the extent of the amount so found due from the primary debtor, which sum the garnishee shall pay into Court, or to the primary creditor, towards the satisfaction of the claim, or in default thereof, execution may issue to levy the same forthwith, or at such later period as the Judge may direct, which execution may be according to the form prescribed as aforesaid. R. S. O. 1887, c. 51, s. 187.

Where
primary
debtor
enters no
defence.

(2) If no defence has been entered by the primary debtor, and the primary creditor before the trial abandons the claim against the garnishee, final judgment may be entered for the claim of the primary creditor and costs by the clerk as if there had been no garnishee proceedings. 60 V. c. 14, s. 9.

GENERAL PROVISIONS.

193.—(1) In cases under this Act, and whether the claim of the primary creditor is or is not a judgment, the primary debtor, the garnishee and all other parties in any way interested in, or to be affected by the proceeding, shall be entitled to set up any defence, as between the primary creditor and the primary debtor, which the latter would be entitled to set up in an ordinary action, and also any such defence as between the garnishee and the primary debtor, and may also show any other just cause why the debt ought to be garnished should not be paid over or applied in or towards the satisfaction of the claim of the primary creditor.

All parties interested may show cause, etc.

(2) A primary debtor or garnishee who desires to set up a statutory or other defence or set-off or to admit his liability in whole or in part for the amount claimed in such action, shall file with the clerk the particulars of such defence or set-off, or an admission of the amount due or owing by the primary debtor or the garnishee, as the case may be, within eight days after service on him of the summons, and the clerk shall forthwith send by mail to each of the said parties to the action a copy of such defence, set-off or admission, and the primary creditor may file with the clerk a notice that he admits the defence or set-off or accepts the admission of liability as correct; a copy of the notice shall be sent by the clerk by mail forthwith to the garnishee, and in the absence of any notice of defence or set-off from any primary debtor or garnishee, the Judge may, in his discretion, give judgment against such primary debtor or garnishee; and in the event of the primary creditor failing to file a notice admitting or rejecting such defence, set-off or admission of liability, the garnishee shall not be bound to attend at the trial, and the sum admitted to be due or owing by the garnishee, shall be taken to be the correct amount of his liability unless the Judge shall otherwise order, in which latter case the garnishee shall be notified by the clerk and shall have an opportunity of attending at a subsequent date and being heard before judgment is given against him.

Defences in garnishee proceedings.

Costs.

(3) The cost of all notices required to be given under this section shall be costs in the cause, and in no case shall be payable by the garnishees unless specially ordered by the Judge. R. S. O. 1887, c. 51, s. 188.

Service of
summons
on gar-
nishee
shall bind
the debt
until
hearing.

194. In all cases under this Act (except where an attaching order has been served, already provided for), service of the summons on the garnishee shall have the effect of attaching and binding in his hands (subject to the rights of other parties) the debt sought to be garnished, from the time of the service until a final decision made on the hearing of the summons; and payment of the debt by the garnishee, during such period, to any one other than the primary creditor, or into Court for satisfying his claim, shall, to the extent of the claim, be void, and the garnishee shall be liable to pay the same again, to the extent of the claim, to satisfy the same, unless the Judge otherwise orders. R. S. O. 1887, c. 51, s. 189. See also Rule 79.

And after
judgment.

195. If the judgment be given for the primary creditor against the garnishee, the debt garnished shall, unless the Judge otherwise orders, continue bound in the hands of the garnishee to satisfy the claim of the primary creditor; and payment in such case by the garnishee of the debt, to the extent of the claim, either into Court or to the primary creditor, shall, to that extent, be a discharge to the garnishee, as between him and the primary debtor; and any thereof otherwise than last aforesaid, except by leave of the Judge, shall be void; and the garnishee in such case shall be liable to pay the same again to satisfy the claim of the primary creditor. R. S. O. 1887, c. 51, s. 190.

Costs.

196. The garnishee shall not be liable for the costs of the proceedings, unless and in so far only as occasioned by setting up a defence, which he knew, or ought to have known, was untenable; and, subject to this provision, the costs of all parties shall be in the discretion of the Judge. R. S. O. 1887, c. 51, s. 191. See also Rule 84.

Costs of
primary
creditor.

197. The Judge in any case brought to garnish a debt may, in giving judgment on behalf of the primary creditor,

award the costs of the proceeding to the primary creditor out of the amount found due from the garnishee to the primary debtor, anything in this Act to the contrary notwithstanding. R. S. O. 1887, c. 51, s. 192.

198. Judgment shall not be given either against the primary debtor or the garnishee until the said summons and memorandum, with an affidavit of the due service of both on the proper parties, are filed, unless the Judge for special reasons orders otherwise. R. S. O. 1887, c. 51, s. 193.

199. No execution shall in any case issue to levy money owing from a garnishee until and so far only as such money has become fully due. R. S. O. 1887, c. 51, s. 194.

200. Any party entitled to or interested in any money or debt attached or bound in the hands of the garnishee by a proceeding under this Act, may, at any time before actual payment thereof by the garnishee, apply to the Judge for an order (which the Judge is hereby authorized to make), to the effect that such money or debt be discharged from the claim of the primary creditor; and thenceforth such money or debt shall cease to be attached or bound for such claim; and such an application and such an order may also be made, if the Judge thinks fit, after the money or debt has been paid over by the garnishee, in which case all parties shall be remitted to their original rights in respect thereto, except as against the garnishee having already paid the debt or money, whose payment shall not be affected thereby, but shall be and remain an effectual discharge to him. R. S. O. 1887, c. 51, s. 195.

201.—(1) If the Judge, on the hearing of a summons under this Act, or on special application for the purpose, thinks proper, he may, before giving judgment against the garnishee, or at any time before actual payment by the garnishee, order such security to be given as may be approved by himself or the clerk, by or on behalf of the primary creditor, for the repayment into Court to abide the Judge's order, in case a Judge's order is made for repayment.

(2) The bond shall be to the clerk by his name of office, and shall enure for the benefit of all parties interested in or entitled to the money, and may, by order of the Judge, and on such terms as to indemnity against costs and otherwise as he may impose, be sued in the name of the clerk of the Court for the time being, for the benefit of the party entitled. R. S. O. 1887, c. 51, s. 196.

Case of
adverse
claims.

202. In case any one other than the primary creditor or primary debtor claims to be entitled to the debt owing from the garnishee, by assignment thereof or otherwise, the Judge, when adjudicating in any of the cases aforesaid, or by calling the proper parties before him by summons for the purpose, may enquire into and decide upon the claim, and may allow or give effect to it, or may hold it void as against the primary creditor for being a fraud upon creditors or otherwise, as the justice of the case may require; and for such purpose he may require the attendance of such parties and witnesses (their conduct money being first paid) as he may think necessary. R. S. O. 1887, c. 51, s. 197.

[In connection with garnishment proceedings may be read the Act passed at the last session of the Legislature (January, 1898), entitled "An Act to provide for the Garnishment of the Salaries of Civil Servants." It will be found at the end of this volume. Authority is therein given creditors to garnish money owing by the Crown to civil servants. The Act does not apply to any debt contracted before the passing thereof. It comes into force on 1st May, 1898.]

Judge may
postpone
or adjourn
proceed-
ings.

203. The Judge may postpone or adjourn from time to time the hearing and other proceedings in garnishee cases, to allow time for giving omitted notices of defence, or to produce further evidence, or for any other purpose; and may require service on, and notice to, other or additional parties, and may prescribe and devise forms for any proceeding, and may amend all summonses, memoranda, claims, accounts, notices and other papers and proceedings, and copies thereof as justice may require. R. S. O. 1887, c. 51, s. 198.

NOTICE WHERE JURISDICTION DISPUTED.

79

204. The clerks of the several Division Courts shall keep in their respective offices a debt attachment book, according to the form prescribed by the General Rules or Orders from time to time in force relating to Division Courts, in which shall be correctly entered the names of parties, the dates, statements, amounts and other proceedings under this Act, as indicated by the said form, and copies of any entries made therein may be taken by any one on application free of charge. R. S. O. 1887, c. 51, s. 199.

Debt attachment book.

NOTICE WHERE JURISDICTION DISPUTED.

205. In all cases where a defendant, primary creditor or garnishee intends to contest the jurisdiction of a Division Court to hear or determine any cause, matter or thing in such Court, he shall leave with the clerk of the Court, within eight days after the day of service of the summons on him (where the service is required to be ten days before the return), or within twelve days after the day of such service (where the service is required to be fifteen or twenty days before the return), a notice to the effect that he disputes the jurisdiction of the Court, and the clerk shall forthwith give notice thereof to the plaintiff, primary creditor, or their solicitors or agents in the same way as notice of defence is now given, and in default of such notice disputing the jurisdiction of the Court, the same shall be considered as established and determined, and all proceedings may thereafter be taken as fully and effectually as if the said action or proceeding had been properly commenced, entered or taken in such Court; and the notice shall be in writing; and prohibition to a Division Court shall not lie in such action from any Court whatever, where the notice disputing the jurisdiction has not been duly given as aforesaid. R. S. O. 1887, c. 51, s. 176.

Attachment of debts due for wages, etc.

Notice where jurisdiction of Court disputed to be given in garnishee cases.

ARBITRATION.

206. The Judge may, in any case, with the consent of both parties to the action, or of their agents, order the same with or without other matters in dispute between such

Referenced to arbitration by order of Judge or by consent.

parties, being within the jurisdiction of the Court, to be referred to arbitration to such person or persons, and in such manner and on such terms as he thinks reasonable and just; or the parties to an action may, by writing, signed by themselves or their agents, agree to refer the matters in dispute to the arbitrament of a person named in the agreement, which shall be filed with the clerk, and be entered on the Procedure Book as notices are entered. R. S. O. 1887, c. 51, s. 200.

Revocation
of
reference.

207. The reference shall not be revocable by either party except with the consent of the Judge. R. S. O. 1887, c. 51, s. 201.

Award to
be entered
as the
judgment.

208. The award of the arbitrator or arbitrators or umpire shall be entered as the judgment in the cause, and shall be as binding and effectual as if given by the Judge. R. S. O. 1887, c. 51, s. 202.

Judge may
set aside
award.

209. The Judge, on application to him within fourteen days after the entry of the award, may, if he thinks fit, set aside the award, or may, with the consent of both parties, revoke the reference and order another reference to be made in the manner aforesaid. R. S. O. 1887, c. 51, s. 203.

Arbitrators
may also
administer
oaths.

210. Any arbitrator may administer an oath or affirmation to the parties, and to all other persons examined before such arbitrator. R. S. O. 1887, c. 51, s. 204.

CONFESSIONS OF DEBT.

Clerks and
bailiffs
may take
confessions

211. A bailiff or clerk, before or after action commenced, may take a confession of acknowledgment of debt from a debtor or defendant desirous of executing the same, which confession or acknowledgment shall be in writing and witnessed by the bailiff or clerk at the time of the taking thereof; and upon the production of the confession or acknowledgment to the Judge, and its being proved by the oath of the bailiff or clerk, judgment may be entered thereon. R. S. O. 1887, c. 51, s. 205.

212. The oath or affidavit shall state that the party making it has not received, and that he will not receive anything from the plaintiff or defendant, or any other person, except his lawful fees, for taking the confession or acknowledgment, and that he has no interest in the demand sought to be recovered. R. S. O. 1887, c. 51, s. 206.

COSTS.

213.—(1) The costs of any action or proceeding not otherwise provided for, shall be paid by or apportioned between the parties in such manner as the Judge thinks fit, and in cases where the plaintiff does not appear in person or by some person in his behalf, or appearing does not make proof of his demand to the satisfaction of the Judge, he may award to the defendant such costs and such further sum of money, by way of satisfaction for his trouble and attendance, as he thinks proper, to be recovered as provided for in other cases under this Act, and in default of any special direction, the costs shall abide the event of the action, and execution may issue for the recovery thereof in like manner as for any debt adjudged in the Court.

(2) In all actions or other proceedings brought in a Division Court in which the plaintiff fails to recover judgment by reason of the Court having no jurisdiction over the subject matter thereof, the Judge presiding in the Court shall have jurisdiction over the costs of the action or other proceeding, and may order by and to whom the same shall be paid, and the recovery of the costs awarded to be paid may be enforced by the same remedies as the costs in actions or proceedings within the proper competence of the Court are recoverable. R. S. O. 1887, c. 51, s. 207.

214. Where, in a contested case for more than \$100, a counsel, solicitor or agent has been employed by the successful party in the conduct of the cause or defence, the Judge may, in his discretion, direct a fee of \$5—to be increased according to the difficulty and importance of the case to a sum not exceeding \$10—to be taxed to the successful party, and the same when so allowed shall be taxed by the

clerk and added to the other costs. R. S. O. 1887, c. 51, s. 208.

Costs of
witnesses
in certain
cases.

215. Where the defendant having disputed the plaintiff's claim afterwards and before the opening of the Court confesses judgment or pays the claim so short a time before the sitting of the Court that the plaintiff cannot in the ordinary way be notified thereof, and without such notice the plaintiff *bona fide* and reasonably incurs expenses in procuring witnesses or in attending at Court, the Judge may, in his discretion, order the defendant to pay such costs or such portion thereof as to the Judge seems just. R. S. O. 1887, c. 51, s. 209.

Costs in
actions on
judgments.

216. No costs shall be recoverable in an action brought in any Court for the recovery of a sum awarded by judgment in a Division Court without the order of the Judge of the Court in which the action is brought, on sufficient cause shown. R. S. O. 1887, c. 51, s. 210.

PROCEEDINGS NOT TO BE SET ASIDE FOR MATTERS OF FORM.

Proceed-
ings
not to be
quashed
for want
of form.

217. No order, verdict, judgment, or other proceeding had or made concerning any matter or thing under this Act, shall be quashed or vacated for any matter of form. R. S. O. 1887, c. 51, s. 211.

JUDGMENT AND EXECUTION.

When
money
not paid,
pursuant
to order,
execution
to issue.

218. In case the Judge makes an order for the payment of money, and in case of default of payment of the whole or of any part thereof, the party in whose favour the order has been made may sue out execution against the goods and chattels of the party in default; and thereupon the clerk, at the request of the party prosecuting the order, shall issue under the seal of the Court an execution to one of the bailiffs of the Court, who by virtue thereof shall levy by distress and sale of the goods and chattels of such party, being within the county within which the Court was holden, such sum of money and costs (together with interest thereon from the date of the entry of the judgment) as have been so ordered, and remain due, and shall pay the same over to the said clerk. R. S. O. 1887, c. 51, s. 212.

1887, c. 51.

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219. If there are cross judgments between the parties, ^{Cross judgments may be set-off.} the party only who has obtained judgment for the larger sum shall have execution, and then only for the balance over the smaller judgment, and satisfaction for the remainder, and also satisfaction on the judgment for the smaller sum shall be entered; and if both sums are equal, satisfaction shall be entered upon both judgments. R. S. O. 1887, c. 51, s. 213.

220. Except in actions brought under section 85 of ^{Writs of execution, where to be executed} this Act, no writ in the nature of a writ of execution or attachment shall be executed out of the limits of the county over which the Judge of the Court from which the writ issues has jurisdiction. R. S. O. 1887, c. 51, s. 214.

221. In case a party against whom a judgment has ^{If party removes to another county, execution obtainable in such county.} been entered up removes to another county without satisfying the judgment, the County Judge of the county to which the party has removed may upon the production of a copy of the judgment duly certified by the Judge of the county in which the judgment has been entered, order an execution for the debt and costs, awarded by the judgment, to issue against such party. R. S. O. 1887, c. 51, s. 215.

222. If the party against whom an execution has been ^{Effect of payment of execution before sale.} awarded pays or tenders to the clerk or bailiff of the Division Court out of which the execution issued, before an actual sale of his goods and chattels, the amount to be levied under such execution, or such part thereof as the party in whose favour the execution has been awarded agrees to accept in full of his debt, together with the fees to be levied, the execution shall thereupon be superseded, and the goods shall be released and restored to such party. R. S. O. 1887, c. 51, s. 216.

223. The clerk of a Division Court shall, upon the ^{Clerk of any Court in which judgment entered to prepare transcript thereof, to transmit to any other} application of a plaintiff or defendant (or his agent), having an unsatisfied judgment in his favour in such Court, prepare a transcript of the entry of the judgment, and shall send the same to the clerk of any other Division Court, whether in the same or any other county, with a certificate at the

Division
Court.

foot thereof signed by the clerk who gives the same, and sealed with the seal of the Court of which he is clerk, and addressed to the clerk of the Court to whom it is intended to be delivered, and stating the amount unpaid upon the judgment and the date at which the same was recovered; and the clerk to whom the certificate is addressed shall, on the receipt of the transcript and certificate, enter the transcript in a book to be kept in his office for the purpose, and the amount due on the judgment according to the certificate; and all proceedings may be taken for the enforcing and collecting of the judgment in such mentioned Court, by the officers thereof, that could be had or taken for the like purpose upon judgments recovered in any Division Court. R. S. O. 1887, c. 51, s. 217.

Proceed-
ings
stayed
in office
from
which
transcript
of
judgment
is issued.

(2) After a transcript has been issued under this section, no further proceedings shall be had in the Court from which the transcript issued without an order from the Judge, unless the creditor, his solicitor or agent, shall make and file with the clerk of the said Court an affidavit stating: (1) That the judgment remains unsatisfied in whole or in part; (2) that the execution issued in the division to which the transcript was issued has been returned *nulla bona*, or that he believes that the defendant has not sufficient goods in that division to satisfy the said judgment, and upon such affidavit being filed, the clerk may issue such other process as the creditor may direct. 52 V. c. 12, s. 24.

Enforcing
Division
Court
claims.

224. Where any Division Court judgment or execution has been or shall hereafter be filed with any sheriff under the Creditors' Relief Act, or a certificate for any claim within the jurisdiction of the Division Court, and the same is not paid in full, and the sheriff is unable to make the money thereon, the creditor may obtain a return thereof from the sheriff according to the facts, and file the same with the clerk of the Division Court in which the judgment was recovered, or in the place where the cause of action arose, or the debtor, or one of the debtors, if more than one, resided, and the clerk of the Division Court shall enter the same in his proper books, and it shall thereupon become a

judgment of the said Court for the unpaid balance due thereon as appearing by the sheriff's return, and the claim may be enforced in the same manner as any other judgment of the Division Court. 51 V. c. 11, s. 4.

225. The clerk of every Division Court shall, immediately after *nulla bona* has been returned to an execution issued on a transcript of judgment received from another Court, forward through the post office to the plaintiff, if his address is known, or to the clerk who issued the transcript, at his post office address, a notice, enclosed in an envelope, informing him of the date at which the execution issued, the date at which the same was returned by the bailiff, and the return made thereto; the notice thus sent shall be prepaid and registered, and the clerk shall obtain and file among the papers in the action the post office certificate of the registration, and the postage and charge for registration shall be costs in the cause: the absence from amongst the papers in the action of the certificate of registration shall be *prima facie* evidence against the clerk that the notice has not been forwarded. R. S. O. 1887, c. 51, s. 218.

Clerk to give notice to plaintiff of return of *nulla bona* in case of execution on a transcript of judgment.

226. In case of the death of either or both of the parties to a judgment in a Division Court, the party in whose favour the judgment has been entered, or his personal representative in case of his death, may revive the judgment against the other party, or his personal representative in case of his death, and may issue execution thereon in conformity with any rules which apply to the Division Court in that behalf. R. S. O. 1887, c. 51, s. 219.

Revival of judgment in case of death of party to judgment.

227. Every execution shall be dated on the day of its issue, and shall be returnable within thirty days from the date thereof, but may from time to time be renewed by the clerk, at the instance of the execution creditor, for six months from the date of such renewal, in the same manner and with the same effect as like writs from the Courts of Record may be renewed, under the provisions of the Execution Act. R. S. O. 1887, c. 51, s. 220.

Execution, when dated and returnable.

Renewal of
executions
by county
attorney
in certain
cases.

228. Where the books, papers and other matters in the possession of any clerk, by virtue of or appertaining to his office, become the property of the county crown attorney, under section 52 of this Act, or in case of the suspension of a clerk, the county crown attorney may, during such suspension, or until the appointment and qualification of another clerk, when the same shall be presented for that purpose, renew any writ of execution issued out of such Court, which may lawfully be renewed, and the renewal shall have the same force and effect as if the same had been renewed by a clerk of the Court, and he shall be entitled to the same fees therefor as a clerk for like services. R. S. O. 1887, c. 51, s. 221.

Judge may
order an
execution
to issue
before
regular
day.

229. In case the Judge is satisfied upon application on oath made to him by the party in whose favour a judgment has been given, or is satisfied by other testimony that such party will be in danger of losing the amount of the judgment, if compelled to wait till the day appointed for the payment thereof before any execution can issue, the Judge may order an execution to issue at such time as he thinks fit. R. S. O. 1887, c. 51, s. 222.

Executions
against
lands.

230.—(1) In case an execution against goods is returned *nulla bona* by a bailiff in the Court in which the judgment was recovered, and the sum remaining unsatisfied on the judgment amounts to the sum of \$40, the party in whose favour the judgment was entered may sue out an execution against the lands of the party in default, and the clerk of the Court in which such judgment was obtained shall, at the request of the party prosecuting the judgment, issue under the seal of the Court a writ of execution against the lands of the party in default to the sheriff of the county in which the said return of *nulla bona* was made, or to the sheriff of any other county in this Province in which lands of the party in default are situate and which writ may be in the form contained in Schedule D. 57 V. c. 23, s. 8 (1, part, 5, 6).

(2) The sheriff, on receipt of such execution, shall act upon the same, and it shall have the same force and effect

against the lands of the party in default as an execution issued from the County Court. 57 V. c. 23, s. 8 (1, part).

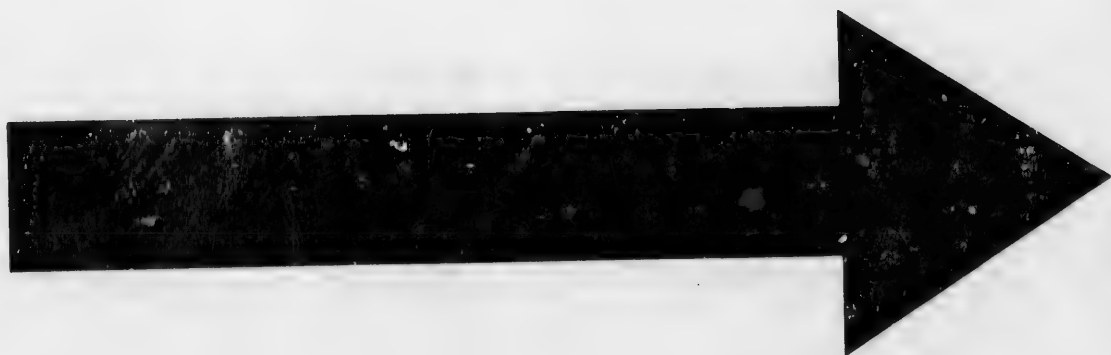
(3) The sheriff receiving such writ of execution shall make a return thereof, and pay any money made thereon, to the clerk of the Court out of which such execution issued. 57 V. c. 23, s. 8 (3). Sheriff's return to be made to Clerk.

(4) Until such judgment is fully paid and satisfied, the party entitled to the same may, subject to section 231, pursue the same remedy for the recovery thereof, or of any balance due thereon, as if the judgment had been obtained in the County Court. 57 V. c. 23, s. 8 (2).

231. After an execution has issued against lands under the preceding section, no further proceedings shall be had in the Court from which the said execution issued, without either an order of the Judge, or unless the judgment creditor, his attorney or agent, shall make and file with the clerk of the Court from which the said execution issued an affidavit stating, (1) that the judgment remains unsatisfied in whole or in part; (2) the amount, if any, which has been paid upon said judgment; (3) that execution against lands has been returned unsatisfied, or that he believes the judgment debtor has not sufficient lands in the county in which said execution against lands was issued to satisfy the said judgment. 57 V. c. 23, s. 8 (4). Further proceedings after execution against lands issued.

232. On every writ of execution issued from a Division Court against lands, the sheriff shall be entitled to the same fees as upon a writ of execution issued against lands and tenements from a County Court. 58 V. c. 14, s. 2. Fees on writ against lands.

233. On any execution against goods and chattels, the sheriff or other officer to whom the same is directed may seize and sell the interest or equity of redemption in any goods or chattels of the party against whom the writ has issued, and the sale shall convey whatever interest the mortgagor had in the goods and chattels at the time of the seizure. R. S. O. 1887, c. 51, s. 227. The interest of a mortgagor in goods mortgaged may be sold in execution.



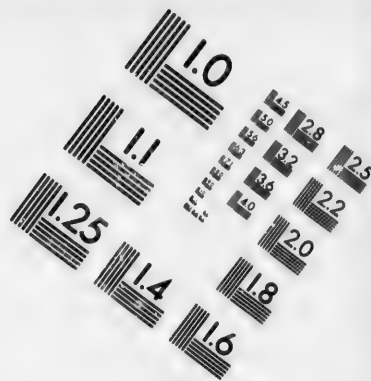
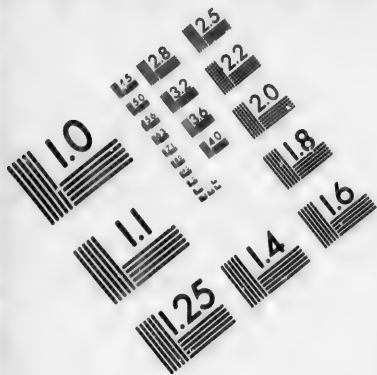
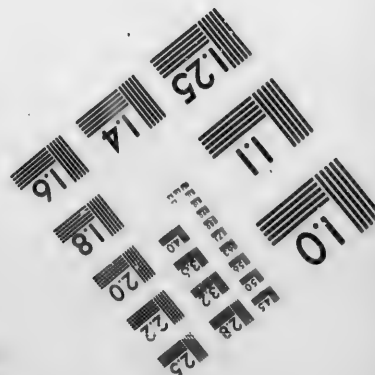
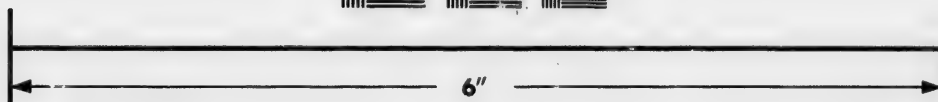
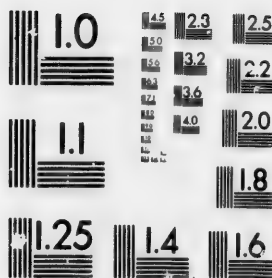


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What may
be seized
under
execution
against
goods and
chattels.

234. Every bailiff or officer having an execution against the goods and chattels of any person, may by virtue thereof seize and take any of the goods and chattels of such person, except those which are by law exempt from seizure, and may also seize and take any money or bank notes, and any cheques, bills of exchange, promissory notes, bonds, specialties or securities for money belonging to such person. R. S. O. 1887, c. 51, s. 228.

Bailiff to
hold
cheques,
notes, etc.,
seized
under exe-
cution for
benefit of
plaintiff.

235. The bailiff shall, for the benefit of the plaintiff, hold any cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money so seized or taken as aforesaid, as security for the amount directed to be levied by the execution, or so much thereof as has not been otherwise levied or raised, and the plaintiff, when the time of payment thereof has arrived, may sue in the name of the defendant, or in the name of any person in whose name the defendant might have sued, for the recovery of the sum or sums secured or made payable thereby. R. S. O. 1887, c. 51, s. 229.

Defendant
in original
cause not to
discharge
action.

236. The defendant in the original cause shall not discharge such action in any way without the consent of the plaintiff or of the Judge. R. S. O. 1887, c. 51, s. 230.

The party
wishing to
enforce
must
secure
costs.

237. The party who desires to enforce payment of a security seized or taken as aforesaid, shall first pay or secure all costs that may attend the proceeding; and the moneys realized, or a sufficient part thereof, shall be paid over by the officer receiving the same to apply on the plaintiff's demand, and the overplus, if any, shall be forthwith paid to the defendant in the original action, under the direction of the Judge. R. S. O. 1887, c. 51, s. 231.

iliff
after
seizure of
goods to
indorse
date of
seizure
and give
notice of
it

238. The bailiff, after seizing goods and chattels by virtue of an execution, shall indorse on the execution the date of the seizure, and shall immediately, and at least eight days before the time appointed for the sale, give public notice by advertisement signed by himself, and put up in three of the most public places in the division where the

goods and chattels have been taken at the time and place within the division when and where they will be exposed to sale, and the notice shall describe the goods and chattels taken. R. S. O. 1887, c. 51, s. 232.

239. The goods so taken shall not be sold until the expiration of eight days at least next after the seizure thereof, unless upon the request in writing under the hand of the party whose goods have been seized. R. S. O. 1887, c. 51, s. 233. Goods not to be sold till eight days after seizure.

240. No clerk, bailiff or other officer of a Division Court shall, directly or indirectly, purchase any goods or chattels at any sale made by any Division Court bailiff under execution, and every such purchase shall be absolutely void. R. S. O. 1887, c. 51, s. 234. [See also c. 17, s. 35.] Bailiff and other officers not to purchase goods seized.

241. Where in any Division Court action a bailiff has seized goods under and by virtue of a writ of execution or attachment, and the action is afterwards settled between the parties thereto, or the defendant in the action makes an assignment for the general benefit of his creditors, the said bailiff shall, until his fees and disbursements upon the said writ are fully paid and satisfied, have a lien therefor upon so much of the said goods as will reasonably satisfy the same, but in the event of a dispute as to the proper amount of said fees and disbursements, the amount claimed therefor may be paid into Court until the proper amount shall be certified by the Judge, and on such payment into Court the said lien shall cease and determine. 52 V. c. 12, s. 2. Right of bailiff to fees on executions, etc., when action settled or assignment made.

DEATH, ETC., OF BAILIFF WHILE EXECUTION OR ATTACHMENT UNEXECUTED.

242. In the event of the death, resignation or removal from office of a bailiff of a Division Court, after action taken by him under any writ of execution or warrant of attachment as bailiff, the proceedings may be continued by the bailiff, his successor, and in his own name, as fully and effectually as if such action had been so taken by himself; Continuation of proceedings after death of bailiff.

the benefit of all sureties given to the bailiff in his official capacity shall inure to his successor in office. 60 V. c. 14, s. 16.

EXAMINATION OF JUDGMENT DEBTORS.

Judgment
debtors
may be
examined
at the
instance
of their
creditors.

243.—(1) A party having an unsatisfied judgment or order in a Division Court, for the payment of any debt, damages or costs, may procure from the Court wherein the judgment has been obtained, if the defendant resides or carries on his business within the county in which the division is situate, or from any Division Court into which the judgment has been removed under section 223 of this Act and within the limits of which Division Court the defendant resides or carries on his business, a summons in the form prescribed by the general rules or orders from time to time in force relating to Division Courts, and the summons shall be served personally upon the person to whom the same is directed, requiring him to appear at a time and place therein expressed, to answer such things as are therein named, and if the defendant appears in pursuance thereof, he may be examined upon oath touching his estate and effects, and the manner and circumstances under which he contracted the debt or incurred the damages or liability, which formed the subject of the action and as to the means and expectation he then had, and as to the property and means he still has of discharging the debt, damages or liability, and as to the disposal he has made of any property: Provided, nevertheless, that before the summons shall issue, the plaintiff, his solicitor or agent, shall make and file with the clerk of the Court from which the summons may issue an affidavit stating:

Affidavit
required
before
judgment
summons.

(a) That the judgment remains unsatisfied in the whole or in part;

(b) That the deponent believes that the defendant sought to be examined is able to pay the amount due in respect of the judgment or some part thereof; or,

(c) That the defendant sought to be examined has rendered himself liable to be committed to gaol under this Act. R. S. O. 1887, c. 51, s. 235; 57 V. c. 23, s. 15.

(2) The person obtaining the summons and all witnesses whom the Judge thinks requisite, may be examined upon oath, touching the inquiries authorized to be made as aforesaid. R. S. O. 1887, c. 51, s. 236. Examination of witnesses.

244. The examination shall be held in the Judge's chamber unless the Judge otherwise directs. R. S. O. 1887, c. 51, s. 237. The examination to be in Judge's chamber.

245. The costs of the summons and of all proceedings thereon shall be deemed costs in the cause, unless the Judge otherwise directs. R. S. O. 1887, c. 51, s. 238. Costs.

246. In case a party has, after his examination, been discharged by the Judge, no further summons shall issue out of the same Division Court at the suit of the same or any other creditor, without an affidavit satisfying the Judge upon facts not before the Court upon the examination, that the party had not then made a full disclosure of his estate, effects and debts, or an affidavit satisfying the Judge that since the examination the party has acquired the means of paying. R. S. O. 1887, c. 51, s. 239. Party examined and discharged not to be again summoned. Exception.

247. If the party so summoned—

1. Does not attend as required by the summons, or allege a sufficient reason for not attending; or When judgment debtor may be committed to gaol.
[Sub-sections 2 and 3 are repealed and the following substituted]:

2. If he attends and refuses to be sworn or to make answer to such questions as may be put to him, and which in the opinion of the Judge are proper questions. Rev. Stat. c. 60, s. 247, s.-ss. 2, 3, 5, repealed.

[Sub-section 5 is repealed and the following substituted]:

5. If it appears that the judgment debtor had, when or since judgment was obtained against him, sufficient means and ability to pay the debt or damages or costs recovered against him, either altogether or by the instalments which the Court in which the judgment was obtained has ordered Committal of judgment debtor for fraud.

without depriving himself or his family of the means of living, and that he has wilfully refused or neglected to pay the same as ordered, the Judge may, if he thinks fit, order such party to be committed to the common gaol of the county in which the party so summoned resides or carries on business, for any period not exceeding forty days.

[The amendments made last session are here introduced.]

[The amending Act is given in full at the end of this Act. Opinions differ as to the effect of the amendment of sub-section 5. To the writer it appears that while the language is varied, the same discretionary power rests in the Judge as heretofore.

It is also provided by sections 8 and 9 of the amending Act, that sections 3 and 4 shall not apply to claims, suits or proceedings upon debts contracted before the passing thereof.

And that no suit or action shall be brought in the Division Court upon any judgment, decree or order for the payment of money made by the High Court or the County Court where execution may issue upon or in respect of such judgment, decree or order. *Vide* Act at end of this Act.]

In what cases only the party summoned may be committed for non-attendance; costs allowed him in certain cases.

218. A party failing to attend according to the requirements of such summons, shall not be liable to be committed to gaol for the default, unless the Judge is satisfied that such non-attendance is wilful, or that the party has failed to attend after being so summoned; and if at the hearing it appears to the Judge, upon the examination of the party or otherwise, that he ought not to have been so summoned, or if at the hearing the judgment creditor does not appear, the Judge shall award the party summoned a sum of money by way of compensation for his trouble and attendance, to be recovered against the judgment creditor in the same manner as any other judgment of the Court. **R. S. O. 1887, c. 51, s. 241.**

Warrant of commitment in case of refusal.

249. Where an order of commitment as aforesaid has been made, the clerk of the Court shall issue under the seal of the Court a warrant of commitment directed to the bailiff

of any Division Court within the county, and the bailiff may by virtue of the warrant take the person against whom the order has been made. R. S. O. 1887, c. 51, s. 242.

250. All constables and other peace officers within their respective jurisdictions shall aid in the execution of every such warrant, and the gaoler or keeper of the gaol of the county in which the warrant has been issued, shall receive and keep the defendant therein until discharged under the provisions of this Act or otherwise by due course of law. R. S. O. 1887, c. 51, s. 243.

Constables,
etc., to
execute
warrants.

251. Any person imprisoned under this Act, who has satisfied the debt or demand, or any instalment thereof payable, and the costs remaining due at the time of the order of imprisonment being made, together with the costs of obtaining the order, and all subsequent costs, shall, upon the certificate of such satisfaction, signed by the clerk of the Court, or by leave of the Judge of the Court in which the order of imprisonment was made, be discharged out of custody. R. S. O. 1887, c. 51, s. 244.

When
debtor in
custody
shall be
discharged.

252. The Judge before whom the summons is heard may, if he thinks fit, rescind or alter any order for payment previously made against a defendant so summoned before him, and may make any further or other order, either for the payment of the whole of the debt or damages recovered and costs forthwith, or by instalments, or in any other manner that he thinks reasonable and just. R. S. O. 1887, c. 51, s. 245.

Judge may
rescind
order and
may alter
and modify
the same.

253. In case the defendant in an action brought in a Division Court has been personally served with the summons to appear, or personally appears at the trial, and judgment is given against him, the Judge, at the hearing of the cause or at an adjournment thereof, may examine the defendant and the plaintiff and any other person touching the several things hereinbefore mentioned, and may commit the defendant to prison, and make an order in like manner as

When
defendant
may be
examined
at hearing
as to his
means, etc.

he might have done in case the plaintiff had obtained a summons for that purpose after judgment. R. S. O. 1887, c. 51, s. 246.

Debt not to be extinguished by imprisonment.

254. No imprisonment under this Act shall extinguish the debt or other cause of action on which a judgment has been obtained, or protect the defendant from being summoned anew and imprisoned for any new fraud or other default rendering him liable to be imprisoned under this Act, or deprive the plaintiff of any right to take out execution against the defendant. R. S. O. 1887, c. 51, s. 247.

Similar examination of garnishee.

255. In cases in which judgment shall be recovered against a garnishee under sections 190 or 193 of this Act, such garnishee shall be liable to be examined as a judgment debtor under sections 243 and 254 inclusive of this Act. 57 V. c. 23, s. 18.

Annual return of commitment of judgment debtors.

256. Every Division Court clerk shall make a return to the inspector of Division Courts on or before the 15th day of January in every year, showing the number of judgment debtors who, during the twelve months ending the 31st day of December previously, were ordered to be committed under each of the five heads mentioned in section 247 of this Act. 55 V. c. 11, s. 4.

ABSCONDING DEBTORS.

Absconding debtors.

257. In case a person, being indebted in a sum not exceeding \$100, nor less than \$4, for any debt or damages arising upon a contract, express or implied, or upon a judgment—

1. Absconds from this Province, leaving personal property liable to seizure under execution for debt in any county in Ontario;

2. Attempts to remove such personal property, either out of Ontario or from one county to another therein;

3. Keeps concealed in any county to avoid service of process, and in case any creditor of such person, his servant

or agent makes and produces an affidavit or affirmation to the purport of the form prescribed by the general rules or orders from time to time in force relating to Division Courts, and in case the affidavit or affirmation be filed with the clerk of any Division Court in Ontario, then the clerk, upon the application of the creditor, his servant or agent, shall issue a warrant under the hand and seal of the clerk, in the form prescribed by such general rules and orders, directed to the bailiff of the Division Court within whose division the same is issued, or to a constable of the county, commanding the bailiff or constable to attach, seize, take and safely keep all the personal estate and effects of the absconding, removing or concealed person within the county, liable to seizure under execution for debt, or a sufficient portion thereof to secure the sum mentioned in the warrant, with the costs of the action, and to return the warrant forthwith to the Court out of which the same issued. R. S. O. 1887, c. 51, s. 249.

[As to certain claims between \$4 and \$200, see s. 72 (3).]

258. Any County Judge, or a justice of the peace for the county, may take the affidavit in the last preceding section mentioned, and upon the same being filed with the Judge or justice, the Judge or justice may issue a warrant under his hand and seal in the form prescribed as aforesaid, and the Judge or justice shall forthwith transmit the affidavit to the clerk of the Division Court within whose division the same was made or taken, to be by him filed and kept among the papers in the cause. R. S. O. 1887, c. 51, s. 250.

259. Upon receipt of the warrant by the bailiff or constable, and upon being paid his lawful fees, including the fees of appraisement, the bailiff or constable shall forthwith execute the warrant, and make a true inventory of all the estate and effects which he seizes and takes by virtue thereof, and shall within twenty-four hours after seizure call to his aid two freeholders, who being first sworn by him to appraise the personal estate and effects so seized, shall then appraise the same and forthwith return the inventory attached to the appraisement to the clerk of the Court in which the warrant is made returnable. R. S. O. 1887, c. 51, s. 251.

When Justice of the Peace may issue attachments, etc.

Bailiff or constable to seize and make inventory.

Proceedings may be continued in Court out of which attachment is issued.

260. In any case commenced by attachment in a Division Court, the proceedings may be conducted to judgment and execution in the Division Court of the division within which the warrant of attachment issued. R. S. O. 1887, c. 51, s. 252.

Proceedings commenced before attachment to continue

261. Where proceedings have been commenced in any case before the issue of an attachment, the proceedings may be continued to judgment and execution in the Division Court within which the proceedings were commenced. R. S. O. 1887, c. 51, s. 253.

Property attached may be sold under execution.

262. The property seized upon a warrant of attachment shall be liable to seizure and sale under the execution to be issued upon the judgment, or in case the property was perishable, and has been sold, the proceeds thereof shall be applied in satisfaction of the judgment. R. S. O. 1887, c. 51, s. 254.

Plaintiff not to divide cause of action.

263. No plaintiff shall divide any cause of action into two or more actions for the purpose of bringing the same within the provisions of the six preceding sections, but a plaintiff having a cause of action above the value of \$100 and not exceeding \$200 for which an attachment might be issued if the same were not above the value of \$100 may abandon the excess, and upon proving his case, may recover to an amount not exceeding \$100, and the judgment of the Court in such case shall be in full discharge of all demands in respect of such cause of action, and the entry of judgment therein shall be made accordingly. R. S. O. 1887, c. 51, s. 255.

If several attachments issued.

Rev. Stat. c. 79.

264. In case several attachments issue against any party, then, subject to the provisions contained in section 7 of the Act respecting Absconding Debtors, the proceeds of the goods and chattels attached shall not be paid over to the attaching creditor or creditors according to priority, but shall be ratably distributed among such of the creditors suing out such attachments as obtain judgment against the debtor, in proportion to the amount really due upon such judgments; and no distribution shall take place until reasonable time, in

the opinion of the Judge, has been allowed to the several creditors to proceed to judgment. R. S. O. 1387, c. 51, s. 256.

265. Where the goods and chattels are insufficient to satisfy the claims of all the attaching creditors, no such creditor shall be allowed to share unless he sued out his attachment, and within one month next after the issue of the first attachment, gave notice thereof to the clerk of the Court out of which the first attachment issued, or in which it was made returnable. R. S. O. 1887, c. 51, s. 257.

If goods insufficient to satisfy claims of all attaching creditors.

266.—(1) All the property seized under the provisions of the preceding nine sections, shall be and remain in the custody and possession of the bailiff to whom the warrant of attachment is issued, and he shall take and keep the same until disposed of by law, and he shall be allowed all necessary disbursements and expenses for keeping the same.

Custody of goods seized under attachment.

(2) Where the property is seized under the provisions of the preceding sections by a county constable, it shall be forthwith handed over to the custody and possession of the bailiff of the Court out of which the warrant of attachment issued, or into which it was made returnable; and such bailiff shall take the same into his charge and keeping, and shall be allowed all necessary disbursements for keeping the same. R. S. O. 1887, c. 51, s. 258.

267. In case a person against whose estate or effects such attachment has issued, or any person on his behalf, at any time prior to the recovery of judgment in the cause, executes and tenders to the creditor who sued out the attachment, and files in the Court to which the attachment has been returned, a bond with good and sufficient sureties, to be approved of by the Judge or clerk, binding the obligors, jointly and severally, in double the amount claimed, with condition that the debtor (naming him) will, in the event of the claim being proved and judgment recovered thereon, as in other cases where proceedings have been commenced against the person, pay the same, or the value of the property so taken and seized, to the claimant or claimants, or produce the property whenever thereunto required to satisfy

On what terms goods attached may be restored.

the judgment, the clerk may supersede the attachment, and the property attached shall then be restored. R. S. O. 1887, c. 51, s. 259.

If the
debtor
does not
appear.

268. If within one month from the seizure as aforesaid, the party against whom the attachment issued, or some one on his behalf, does not appear and give such bond, execution may issue as soon as judgment has been obtained upon the claim or claims, and the property seized upon the attachment, or enough thereof to satisfy the judgment and costs, may be sold for the satisfaction thereof, according to law, or if the property has been previously sold as perishable under the provisions hereinafter made, enough of the proceeds thereof may be applied to satisfy the judgment and costs. R. S. O. 1887, c. 51, s. 260.

If served
in person
by a lawyer.

269. Where the property of any person has been seized under a warrant of attachment as aforesaid, and a summons has been personally served on such person before seizure, then the trial of the cause shall be proceeded with as if no such warrant of attachment had been issued, and after judgment execution shall forthwith issue unless otherwise ordered by the Judge. R. S. O. 1887, c. 51, s. 261.

Proceedings
against
debtors
where
process not
previously
served.

Rev. Stat.
c. 7.

270. Subject to the provisions contained in sections 5 and 7 of the Act respecting Absconding Debtors, in order to proceed in the recovery of any debt due by the person against whose property an attachment issues, where process has not been previously served, the same may be served either personally or by leaving a copy at the last place of abode, trade or dealing of the defendant, with any person there dwelling, or by leaving the same at such place if no person be there found; and in every case all subsequent proceedings shall be conducted according to the usual course of practice in Division Courts; and if it appears to the satisfaction of the Judge on the trial, upon affidavit, or other sufficient proof, that the creditor who sued out an attachment had not reasonable or probable cause for taking the proceedings, the Judge shall order that no costs be allowed to the creditor or plaintiff, and no costs in such case shall be recovered in the cause. R. S. O. 1887, c. 51, s. 262.

271. Subject to the provisions contained in sections 5 ^{Perishable goods, how disposed of.} and 7 of the Act respecting Absconding Debtors, in case horses, cattle, sheep or other perishable goods have been taken upon an attachment, the bailiff of the Court who has the custody or keeping thereof (the same having been first appraised, in the manner in section 259 of this Act mentioned), may at the request of the plaintiff who sued out the warrant of attachment, expose and sell the same at public auction, to the highest bidder, giving at least eight days' notice at the office of the bailiff of the said Court, and at two other public places within his division, of the time and place of the sale, if the articles seized will admit of being so long kept, otherwise he may sell the same at his discretion. R. S. O. 1887, c. 51, s. 263.

272. It shall not be compulsory upon the bailiff or constable to seize, or upon the bailiff to sell such perishable goods, until the party who sued out the warrant of attachment has given a bond to the defendant therein, with good and sufficient sureties in double the amount of the appraised value of the goods, conditioned that the party directing the seizure and sale will repay the value thereof, together with all costs and damages incurred in consequence of the seizure and sale in case judgment be not obtained for the party who sued out such attachment, and the bond shall be filed with the papers in the cause. R. S. O. 1887, c. 51, s. 264. ^{Creditors before sale to give bond to indemnify the defendant.}

273. The moneys so made shall be by the bailiff paid over to the clerk, and the residue, if any, after satisfying such judgments, with the costs thereupon, shall be delivered to the defendant or his agent, or to any person in whose custody the goods were found; and the responsibility of the clerk in respect of such property shall cease. R. S. O. 1887, c. 51, s. 265. ^{Application of proceeds of sale.}

274. A bond given in the course of any proceeding under this Act may be sued in any Division Court of the county wherein the same was executed, and proceedings may be thereupon carried on to judgment and execution in such ^{Bond may be sued in the Division Court. Judge may deliver up bond.}

Court, notwithstanding the penalty contained in the bond may exceed the sum of \$100. R. S. O. 1887, c. 51, s. 266.

Delivery of
bond to
party en-
titled.

275. Every such bond shall be delivered up to the party entitled to the same, by the order and at the discretion of the Judge of the Court, to be enforced or cancelled, as the case may require. R. S. O. 1887, c. 51, s. 267.

CLAIMS OF LANDLORDS AND OTHERS IN RESPECT OF GOODS
SEIZED.

Interpre-
tation of
"Land-
lord."

276.—(1) In the next six sections the word "landlord" shall include the person entitled to the immediate reversion of the land, or, if the property be held in joint tenancy, coparcenary or tenancy in common, shall include any one of the persons entitled to the reversion; and

"Agent."

(2) The word "agent" shall mean any person usually employed by the landlord in the letting of lands or in the collection of the rents thereof, or especially authorized to act in any particular matter by writing under the hand of the landlord. R. S. O. 1887, c. 51, s. 268.

Claims of
landlords,
etc., to
goods
seized in
execution,
how to be
adjusted.

Rev. Stat.
c. 66.

When
actions
respecting
the subject
matter
may be
stayed.

277.—(1) In case a claim be made to or in respect of any goods or chattels, property or security, taken in execution or attached under the process of a Division Court, or in respect of the proceeds or value thereof, by a landlord for rent, or by a person not being the party against whom the process issued, then, subject to the provisions of the Act respecting Absconding Debtors, the clerk of the Court, upon application of the officer charged with the execution of the process, may, whether before or after the action has been brought against such officer, issue a summons calling before the Court out of which the process issued, or before the Court holden for the division in which the seizure under the process was made, as well the party who issued the process as the party making the claim, and thereupon any action which has been brought in the High Court or in a local or inferior Court in respect of the claim, shall be stayed.

(2) The Court in which the action has been brought, or ^{Costs.} a Judge thereof, on proof of the issue of the summons, and that the goods and chattels or property or security were so taken in execution or upon attachment, may order the party bringing the action to pay the costs of all proceedings had upon the action after the issue of the summons out of the Division Court.

(3) The County Judge having jurisdiction in such Division Court shall adjudicate upon the claim, and make such order between the parties in respect thereof, and of the costs of the proceedings, as to him seems fit; and shall also adjudicate between the parties, or either of them, and the officer or bailiff in respect of any damage or claim of or to damages arising or capable of arising out of the execution of the process by the officer or bailiff, and make such order in respect thereof, and of the costs of any proceedings as to the Judge shall seem fit; and the order shall be enforced in like manner as an order made in an action brought in the Division Court, and shall be final and conclusive between the parties and as between them and the officer or bailiff, except that upon the application of either the attaching or execution creditor or the claimant, or the officer or bailiff, within fourteen days after the trial, the Judge may grant a new trial upon good grounds shown, as in other cases under this Act, upon such terms as he thinks reasonable, and may in the meantime stay proceedings. ^{County Judge to adjudicate on claim.}

(4) In case the bailiff has more than one execution or attachment at the suit or instance of different persons against the same property claimed as aforesaid, it shall not be necessary for the bailiff to make a separate application on each execution or attachment; but he may use the names of such execution or attaching creditors collectively in such application, and the summons may issue in the name of the creditors as plaintiffs.

(5) Under the provisions of sub-section 3 the Judge shall have power to adjudicate upon and award damages, ^{Power to award damages.} even though the amount of damages claimed, found or

awarded should be beyond the jurisdiction of a Division Court.

(6) In respect of any damages claimed, or of any judgment, order or finding under the provisions of sub-sections 3 and 5 the parties and the bailiff applying, shall have the same rights of defence and counter-claim, including in all cases the right and liability to costs, as would exist had an action, within the jurisdiction of the Division Court, been brought to recover the said damages. R. S. O. 1887, c. 51, s. 269.

Provisions
in relation
to rents
due to
landlords.

278.—(1) So much of the Act passed in the eighth year of the reign of Queen Anne, intituled An Act for the Better Security of Rents and to Prevent Frauds Committed by Tenants, as relates to the liability of goods taken by virtue of any execution, shall not be deemed to apply to goods taken in execution under the process of any Division Court, but the landlord of a tenement in which any such goods are so taken may, by writing under his hand or under the hand of his agent, stating the terms of holding and the rent payable for the same, and delivered to the bailiff making the levy, claim any rent in arrear then due to him, not exceeding the rent of four weeks when the tenement has been let by the week, and not exceeding the rent accruing due in two terms of payment where the tenement has been let for any other term less than a year, and not exceeding in any case the rent accruing due in one year. R. S. O. 1887, c. 51, s. 270.

8 Anne,
c. 14.

(2) Notice of the said claim may be given at any time before the return of the execution, notwithstanding that the goods may in the meantime have been removed from the premises upon which they were seized, and when the goods of a tenant are sold within ten days after the seizure, the money realized shall remain in Court until the expiration of the said term of ten days to answer the claim of the landlord, and in cases where the money has been paid into Court the notice may be directed to the clerk with like effect as if given to the bailiff before the sale of the goods so seized. 60 V. c. 14, s. 10.

279. In case of any such claim being so made, the bailiff making the levy shall distrain as well for the amount of the rent claimed, and the costs of the additional distress, as for the amount of money and costs for which the warrant of execution has issued, and shall not sell the same, or any part thereof, until after the expiration of at least eight days next following after the distress made. R. S. O. 1887, c. 51, s. 271.

How the bailiff is to proceed.

280. For every additional distress for rent in arrear, the bailiff of the Court shall be entitled to have as the costs of the distress, instead of the fees allowed by this Act, the fees allowed by the Act respecting Costs of Distress or Seizure of Chattels. R. S. O. 1887, c. 51, s. 272.

Fees of bailiff in such cases.

Rev. Stat. c. 75.

281. If a replevin is made of the goods distrained, so much of the goods taken under the warrant of execution shall be sold as will satisfy the money and costs for which the warrant issued, and the costs of the sale, and the surplus of the sale and the goods so distrained shall be returned as in other cases of distress for rent and replevin thereof. R. S. O. 1887, c. 51, s. 273.

If replevin made.

282. No execution creditor under this Act shall have his debt satisfied out of the proceeds of the execution and distress, or of the execution only, where the tenant replevies, until the landlord who conforms to the provisions of this Act has been paid the rent in arrear for the periods hereinbefore mentioned. R. S. O. 1887, c. 51, s. 274.

When landlord's claim to rent is to be first paid.

OFFENCES AND PENALTIES.

Contempt of Court.

283. If a person wilfully insults the Judge or acting Judge or any officer of a Division Court during his sitting or attendance in Court, or interrupts the proceedings of the Court, any bailiff or officer of the Court may, by order of the Judge, take the offender into custody, and the Judge may impose upon the offender a fine not exceeding \$20, and in default of immediate payment thereof, the Judge may by

Contempt of Court.

warrant under his hand and seal commit the offender to the common gaol of the county for a period not exceeding one month, unless the fine and costs, with the expenses attending the commitment, are sooner paid. R. S. O. 1887, c. 51, s. 275.

Resisting Officers.

Interfering
with
bailiff.

284. If any officer or bailiff (or his deputy or assistant) be assaulted while in the execution of his duty, or if any rescue be made or attempted to be made of any property seized under a process of the Court, the person so offending shall be liable to a fine not exceeding \$20, to be recovered by order of the Court, or before a justice of the peace of the county or city, and to be imprisoned for any term not exceeding three months, and the bailiff of the Court, or any peace officer, may in any such case take the offender into custody (with or without warrant) and bring him before such Court or justice accordingly. R. S. O. 1887, c. 51, s. 276.

Misconduct of Clerks, Bailiffs, Etc.

Misconduct
of clerks
and bailiffs

285. If a bailiff or officer, acting under colour or pretence of the process of Court, is guilty of extortion or misconduct, or does not duly pay or account for all money levied or received by him by virtue of his office, the Judge, at a sitting of the Court, if a party aggrieved thinks fit to complain to him in writing, may enquire into the matter in a summary way, and for that purpose he may summon and enforce the attendance of all necessary parties and witnesses, and may make such order thereupon for the repayment of any money extorted, or for the due payment of any money so levied or received, and for the payment of any such damages and costs to the parties aggrieved, as he thinks just; and in default of payment of the money so ordered to be paid by the bailiff or officer within the time in the order specified for the payment thereof, the Judge may, by warrant under his hand and seal, cause such sum to be levied by distress and sale of the goods of the offender, together with the reasonable charges of the distress and sale,

and in default of such distress (or summarily in the first instance), may commit the offender to the common gaol of the county for a period not exceeding three months. R. S. O. 1887, c. 51, s. 277.

286. If a clerk, bailiff or other officer exacts or takes ^{Extortion.} any fee or reward other than the fees appointed and allowed by law for or on account of anything done by virtue of his office, or on any account relative to the execution of this Act, he shall, upon proof thereof before the Court, be forever incapable of being employed in a Division Court in any office of profit or emolument, and shall also be liable in damages to the party aggrieved. R. S. O. 1887, c. 51, s. 278.

287. In case a bailiff employed to levy an execution ^{Bailiff neglecting duty in relation to execution.} against goods and chattels, by neglect, connivance or omission, loses the opportunity of so doing, then upon complaint of the party thereby aggrieved, and upon proof of the fact alleged to the satisfaction of the Court, the Judge shall order the bailiff to pay such damages as it appears the plaintiff has sustained, not exceeding the sum for which the execution issued, and the bailiff shall be liable therefor; and upon demand being made therefor and on his refusal to satisfy the same, payment shall be enforced by such means as are provided for enforcing judgments recovered in the Court. R. S. O. 1887, c. 51, s. 279.

288. If a bailiff neglects to return an execution within ^{Right of action against bailiff and sureties for neglecting execution or making false return.} three days after the return day thereof, or makes a false return thereto, the party who sued out the writ may maintain an action in any Court having competent jurisdiction against the bailiff and his sureties on the covenant entered into by them, and shall recover therein the amount for which the execution issued, with interest thereon from the date of the judgment, or such less sum as in the opinion of the Judge or jury the plaintiff under the circumstances is justly entitled to recover. R. S. O. 1887, c. 51, s. 280.

289. If a judgment is obtained in the action against ^{Issuing execution against bailiff and sureties.} the bailiff and his sureties, execution shall immediately issue thereon, and in case of the departure or removal of the bailiff

from the limits of the county, the action may be commenced and carried on against his sureties alone, or against any one or more of them. R. S. O. 1887, c. 51, s. 281.

ENFORCING PAYMENT OF FINES.

Fines, how
enforced by
Division
Courts.

290. In case a Division Court imposes a fine under authority of this Act, the same may be enforced upon the order of the Judge, in like manner as a judgment for any sum adjudged therein, and shall be accounted for as herein provided. R. S. O. 1887, c. 51, s. 282.

How en-
forced by
Justices of
the Peace.

291. In all cases in which by this Act a penalty or forfeiture is made recoverable before a justice of the peace, such justice may, with or without information in writing, summon before him the party complained against and thereupon hear and determine the matter of the complaint, and on proof of the offence convict the offender and adjudge him to pay the penalty or forfeiture incurred, and proceed to recover the same. R. S. O. 1887, c. 51, s. 283.

Form of
conviction.

292. In all cases where a conviction is had for any offence committed against this Act, the form of conviction may be in the words or to the effect following, that is to say:

Be it remembered, that on this day of in the year of our Lord , A. B. is convicted before one (or two, as the case may be) of Her Majesty's Justices of the Peace for the county of (or before , a County Judge of the county of), acting under the Division Courts Act, of having (note the offence); and I (or we) , the said do adjudge the said to forfeit and pay for the same the sum of , or to be committed to the common gaol of the county of for the space of .

Given under
aforesaid.

hand and seal, the day and year

R. S. O. 1887, c. 51, s. 284.

PROTECTION OF PERSONS ACTING UNDER WARRANTS, ETC.

293. No action shall be brought against the bailiff of a Division Court, or against any person acting by his order and in his aid, for anything done in obedience to any warrant under the hand of the clerk and seal of the Court, until a written demand, signed by the person intending to bring the action, of the perusal, and a copy of the warrant has by such person, his solicitor or agent, been served upon or left at the residence of the bailiff, and the perusal and copy have been neglected or refused for the space of six days after the demand. R. S. O. 1887, c. 51, s. 285.

294. In case, after the demand and compliance there- with by shewing the warrant to and permitting a copy thereof to be taken by the person demanding the same, an action is brought against the bailiff or other person who acted in his aid for any such cause without making the clerk who signed or sealed the warrant a defendant, then, on producing or proving the warrant at the trial, the jury shall give their verdict for the defendant, notwithstanding any defect of jurisdiction or other irregularity in or appearing by the warrant. R. S. O. 1887, c. 51, s. 286.

295. If an action is brought jointly against the clerk and bailiff, or the person who acted in his aid, then on proof of the warrant the jury shall find for the bailiff or the person who so acted, notwithstanding such defect or irregularity as aforesaid; and if a verdict is given against the clerk, the plaintiff shall recover his costs against him, to be taxed by the proper officer in such manner as to include the costs which the plaintiff is liable to pay to the defendant for whom a verdict has been found. R. S. O. 1887, c. 51, s. 287.

296. In such action the defendant may plead not guilty, entering a note of this Act in the margin, and in such case may thereupon avail himself of the matters of defence herein given. R. S. O. 1887, c. 51, s. 288.

GENERAL PROVISIONS WITH REGARD TO ACTIONS FOR THINGS DONE UNDER THIS ACT.

Distress
not to be
deemed
unlawful
or persons
making it
trespassers
by reason
of defect
in pro-
ceedings.

Not to be
trespassers
ab initio.

Limitation
of actions
for things
done under
this Act.

Defendant
may tender
amends
and plead
the general
issue, etc.

Plaintiff
not to
have costs
where
verdict not
over ten
dollars
without
certificate.

297. No levy or distress for a sum of money to be levied by virtue of this Act shall be deemed lawful, or the person making the same be deemed a trespasser, on account of any defect or want of form in the information, summons, conviction, warrant, precept or other proceeding relating thereto, nor shall the person distraining be deemed a trespasser from the beginning, on account of any irregularity afterwards committed by him; but the person aggrieved by the irregularity may recover full satisfaction for the special damage. R. S. O. 1887, c. 51, s. 289.

298. Any action or prosecution against any person for anything done in pursuance of this Act shall be commenced within six months after the fact was committed, and shall be laid and tried in the county where the fact was committed, and notice in writing of the action and of the cause thereof shall be given to the defendant one month at least before the commencement of the action. R. S. O. 1887, c. 51, s. 290.

299. If tender of sufficient amends is made before action brought, or if the defendant, after action brought, pays a sufficient sum of money into Court with costs, the plaintiff shall not recover, and in such action the defendant may plead not guilty, and give any special matter in evidence under that plea. R. S. O. 1887, c. 51, s. 291. See also c. 88.

300. In case an action is brought in any Court of Record in respect of any grievances committed by any clerk, bailiff or officer of a Division Court, under colour or pretence of the process of such Court, and the jury upon the trial find no greater damages for the plaintiff than \$10, the plaintiff shall not have costs unless the Judge certifies in writing that the action was fit to be brought in such Court of Record. R. S. O. 1887, c. 51, s. 292.

DISPOSAL OF FINES.

301. The moneys arising from any penalty, forfeiture ^{Fines, how disposed of.} or fine imposed by this Act not directed to be otherwise applied, shall be paid to the clerk of the Court which imposed the same, and shall be paid by him to the county crown attorney of the county to be by him paid over to the Provincial Treasurer, and shall form part of the Consolidated Revenue Fund. R. S. O. 1887, c. 51, s. 293.

DISPOSAL OF MONEYS PAID INTO COURT.

302. The clerk of every Division Court shall, immediately after the receipt of any sum of money whatever for ^{clerk to mail notice of payment of money.} any party to an action, forward, through the post office, to the party entitled to receive the same, a notice, enclosed in an envelope addressed to such party, or in the case of a transcript of judgment from another Court, then to the clerk who issued the same, at his proper post office address, informing him of the receipt of the money; the notice thus sent shall be prepaid and registered, and the clerk shall obtain, and file among the papers in the action the post office certificate of the registration, and shall deduct the postage and charge for registration from the moneys in his hands, but he shall charge no fee for the notice; the absence from among the papers in the action of the certificate of registration shall be *prima facie* evidence against the clerk that the notice has not been forwarded. R. S. O. 1887, c. 51, s. 294.

303. All sums of money which have been paid into Court for the use of any party, and which have remained ^{Unclaimed money to be paid to the county crown attorney.} unclaimed for the period of six years after the same were paid into Court or to the officers thereof, and all sums of money in the hands of the clerk or bailiff paid into Court or to the officers thereof to the use of any suitor shall, if unclaimed for the period of six years after the same were so paid, form part of the Consolidated Revenue Fund, and be paid over by the clerk or officer holding the same to the county crown attorney of his county, to be by him paid over

to the Treasurer of the Province, and no person shall be entitled to claim any sum which has remained unclaimed for six years. R. S. O. 1887, c. 51, s. 295.

Claims of persons under disability not to be prejudiced.

304. No time during which the person entitled to claim such sum was an infant or of unsound mind, or out of the Province, shall be taken into account in estimating the six years. R. S. O. 1887, c. 51, s. 296.

GENERAL RULES AND ORDERS.

Board of Judges and their authority to frame rules continued

305. The existing Board of County Judges with authority to make rules relating to Division Courts shall continue until superseded or revoked by the Lieutenant-Governor; and all rules and forms heretofore made relating to Division Courts and in force when this Act takes effect shall so far as applicable, remain in force until otherwise ordered under the provisions of this Act. R. S. O. 1887, c. 51, s. 297.

The Lieutenant-Governor may appoint five County Judges to frame rules, etc.

306.—(1) The Lieutenant-Governor may from time to time appoint and authorize five of the County Judges, who shall be styled "The Board of County Judges," to frame general rules and forms concerning the practice and proceedings of the Division Courts, and the execution of the process of such Courts, with power also to frame rules and orders in relation to the provisions of this Act, or of any future Act respecting such Courts, as to which doubts have arisen or may arise, or as to which there have been or may be conflicting decisions in any of such Courts.

Retired Judge may be appointed.

(2) The Lieutenant-Governor may appoint any retired County Judge to be one of the members of the Board.

Rules respecting clerks and bailiffs.

(3) The Board may also from time to time make rules for the guidance of clerks and bailiffs, and in relation to the duties and services to be performed, and to the fees to be received by them; and, subject to section 57, may also substitute other fees in lieu of fees payable to clerks and bailiffs under any rule, order or statute.

Amendment of rules.

(4) The Board may from time to time alter or amend any rules or orders made for the Division Courts, and may

for any Division Court division, embracing a city or part of a city, establish a lower tariff of fees from that established for County Division Courts. R. S. O. 1887, c. 51, s. 298.

(5) The inspector of Division Courts for the time being shall be a member of the said Board. 57 V. c. 23, s. 3. Inspector to be a member of Board.

307. The Board of County Judges, or any three of them, shall, under their hands, certify to the President of the High Court all rules and forms made after this Act takes effect, and the said president shall submit the same to the Judges of the High Court, or to any four of them. R. S. O. 1887, c. 51, s. 299. Board to certify rules to the High Court to be laid before the Judges.

308. The Judges of the High Court (of whom the president of one of the Divisions shall be one) may approve of, disallow, or amend any such rules or forms. R. S. O. 1887, c. 51, s. 300. Such rules when approved of by the Judges,

309. The rules and forms so approved of shall have the same force and effect as if they had been made and included in this Act. R. S. O. 1887, c. 51, s. 301. to have force of a statute.

310. The Judges who make any rules and forms approved of as aforesaid shall forward copies thereof to the Lieutenant-Governor, and the Lieutenant-Governor shall lay the same before the Legislative Assembly. R. S. O. 1887, c. 51, s. 302. Board to transmit copies to the Lieutenant-Gov. error, etc

311. The Lieutenant-Governor may, by warrant, direct the Provincial Treasurer to pay, out of the Consolidated Revenue Fund, the contingent expenses connected with the framing, approval and printing of such rules. R. S. O. 1887, c. 51, s. 303. Expenses provided for.

312. In any case not expressly provided for by this Act or by existing rules, or by rules made under this Act, the County Judges may, in their discretion, adopt and apply the general principles of practice in the High Court to actions and proceedings in the Division Courts; provided that Practice of the High Court may be followed in unprovided cases.

nothing herein contained shall be held to authorize the taxation or allowance of costs to any officer of the Court, other than those to be found in the tariff of fees as authorized and allowed by the Board of County Judges, under the provisions of this or any other Act. R. S. O. 1887, c. 51, s. 301.

SCHEDULE A.

(Section 36.)

COVENANT BY CLERK OR BAILIFF.

Know all men by these presents that we *J. B.*, Clerk (*or Bailiff as the case may be*) of the *Division Court, in the County S. S., of*, in the said County of *(Esquire)*, and *P. M.*, of

(Gentleman)
do hereby jointly and severally for ourselves, and for each of our heirs, executors and administrators, covenant and promise that *J. B.*, Clerk (*or Bailiff*) of the said Division Court shall duly pay over to every person entitled to the same, all such moneys as he shall receive by virtue of the said office of Clerk (*or Bailiff*) and shall and will well and faithfully do and perform the duties imposed upon him as such Clerk (*or Bailiff*) by law, and shall not misconduct himself in the said office to the damage of any person being a party in any legal proceeding; (*in the case of a Clerk's covenant insert*); and shall pay over to any Bailiff or Bailiffs of the Division Courts the fees to which he or they may become entitled under the tariff of fees, unless where the Clerk and the Bailiff otherwise agree in writing); nevertheless it is hereby declared that no greater sum shall be recovered under this covenant against the several parties hereto than as follows, that is to say:

Against the said <i>J. B.</i> in the whole,	—dollars.
Against the said <i>S. S.</i> in the whole,	—dollars.
Against the said <i>P. M.</i> in the whole,	—dollars.

In Witness Whereof, we have to these presents set our hands and seals, this _____ day of _____, in the year of Our Lord one thousand eight hundred and _____

Signed, sealed and delivered, }
in the presence of }

R. S. O. 1887, c. 51, Sched.; 60 V. c. 14, s. 11.

SCHEDULE B.

(Section 46.)

PROCEDURE BOOK.

No. Division Court of the
 189 the day of 189
 Ensuing Sittings vs. of
 of of

No.	189	No. of initial letter of item of tariff.	Bailiff.	Clerk.	\$
Received particulars of plain- tiff's claim () for \$, and \$ towards costs Issued () summons to					
Summons ret'd. Served the day of 189 , by miles,					
The defendant having been served with special summons and particulars of claim, and not disputing the same,					
It is adjudged that the plain- tiff recover \$ for debt, and \$ for costs.					

Clerk.

57 V. c. 23, Sched. B.

SCHEDULE C.

(Section 46.)

FOREIGN PROCEDURE BOOK.

No. Division Court of the
 189 vs.

Received summons from County of	Division Court, Rec. Aff.
Issued summons to Bailiff	day of
Summons ret'd. Served the by	Post.
Ret'd to Clerk of County of	Division Court
	Bailiff's fees, Miles. Ser. Att.

57 V. c. 23, Sched. C.

D.C.A.—8

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 51, s. 301.

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 parties hereto

-dollars.
 -dollars.
 -dollars.

nds and seals.
 Our Lord one

14, s. 11.

SCHEDULE D.

(Section 230.)

EXECUTION AGAINST LANDS.

In the Division Court of the Count of

Between A. B., Plaintiff,

and

C. D., Defendant.

Whereas, on the day of , A. D. 18 , the plaintiff duly recovered in the said Court, held in and for the said Division, judgment against the defendant for \$ for debt, and \$ for costs of suit, which remain unsatisfied (*when judgment has been revived, add, and on the day of , A. D. 18 , the said judgment was duly revived.*) You are hereby required to levy of the lands and tenements of the defendant in the said count , the said moneys, amounting together to the sum of \$ and interest thereon at the rate of six per cent. per annum, from the day of A. D. 18 , together with your own fees, poundage and incidental expenses; so that you may have the same immediately after the execution hereof, and pay the same over to the Clerk of this Court for the plaintiff.

Given under the seal of the Court, this day of , A. D. 18 .

Z. Y.,

Clerk.

To V. W.,

Sheriff of the

Count of

57 V. c. 23, Sched. D.

OBSERVATIONS

ON THE

ACT AND RULES.

THE TARIFF DISCUSSED.

NUMBERS OF SECTIONS.—In the last consolidation and revision of the statutes the numbering of the sections has been changed. Officers of the Courts should specially note this. When reference is made to any particular section it is made to the section of the Act as it appears in R. S. O. 1897. Remembering this may save trouble, and will certainly prevent confusion. The 304 sections, which comprised the Act before consolidation, now extend to 312 sections, embracing of course the amendments from time to time made during the ten years from 1887 to 1897.

PLACE OF CLERK'S OFFICE.—It is the Lieutenant-Governor in Council, and not the Judge, as heretofore, who now designates the place within the division in which the clerk's office shall be situated.

LEAVE OF ABSENCE—SURETIES.—Clerks and bailiffs obtain leave of absence and appoint deputies without reference to their sureties, notwithstanding that the sureties are liable for the actions of the deputies so appointed without their knowledge. It would appear to be only fair that the

sureties should be notified. No provision, however, has been made for the purpose.

LIABILITY OF SURETIES FOR FEES.—Sureties are not liable for the fees due from one clerk to another for services—that being a personal matter between the officers themselves.

FORM OF PROCEDURE BOOK.—The provisions of section 46 override the rule (147), as to the form of procedure book. The form provided by the statute and not that (Form 4) given in the rules is to be adopted.

SUPPLYING COURT BOOKS.—In the provisional judicial districts the Government supplies the officers of the Courts with the necessary books—where the emoluments are less than \$500. The cost of books required by officers of the Courts in settled counties are required to be paid by the counties, where emoluments are less than \$500. Application should be made to the county treasurer.

ACCOUNTING FOR FINES.—Section 49 requires a verified return to be made every three months, or as often as required by the county crown attorney.

MONEYS RECEIVED AND PAID.—By section 50 clerks are required to furnish the Judge with a verified account of the moneys received and paid out, and the balance in Court belonging to suitors. A duty somewhat neglected, as found on inspection.

FEES TO COUNTY ATTORNEY.—The fees payable to the county crown attorney when he acts under sections 52 and 53—taking possession of books and papers, where the office is rendered vacant through the death, resignation or removal of the clerk—is \$5 per day and expenses. All accounts for the performance of this duty should be sent to the inspector, in duplicate, by whom they are certified, and thereupon a cheque for the amount issues for payment.

WRONGFUL POSSESSION OF BOOKS.—Under sub-section 2 of section 52, persons wrongfully holding possession of

Court books, moneys or papers are liable to arrest and imprisonment.

ITEM 28 OF TARIFF.—In section 57, having reference to claim not exceeding \$10, the item 24 of tariff, referred to, should read item 28, of revised tariff.

TARIFF OF FEES.—The amended tariff of fees, as adopted by the Board of County Judges, came into force on the 1st July, 1894.

Clerks and bailiffs are entitled to receive for their services the fees therein allowed. No other charges can be legally made or allowed. The table of fees should be hung up in the clerk's office in some conspicuous place exposed to public view. A large printed card containing this table is supplied to every clerk from the office of the inspector. The tariff will also be found appended to the annual report of the inspector, which are distributed to clerks and bailiffs, and to the profession, and amongst such suitors and their solicitors and others as make application for them.

The fees upon every proceeding are payable, in advance to the clerk by the party at whose instance the proceeding takes place—to be afterwards charged against the unsuccessful party. If the clerk gives credit and the fees are not paid in the first instance, the payment thereof may be enforced by order of the Judge and by execution, in like manner as a judgment of the Court. When a clerk hands papers to a bailiff to act, he is liable to the latter for his fees. The amended covenant now in force also settles that point as to the liability of the clerk's sureties. It is only proper and right that a bailiff should look to his clerk for payment, for with the clerk it is an optional matter, the giving trust to suitors, while with the bailiff there is no discretion left; he must obey the process of the Court.

CLERKS MAY BE ELECTED MUNICIPAL COUNCILLORS.—Division Court clerks are eligible to be elected municipal councillors.

Inasmuch as a clerk of a Division Court may be elected a county councillor, and may also be elected to the position

of warden, it is submitted that in that capacity he should be held incapable of voting upon questions affecting the limits of the divisions in his county. Certainly he should not have the power of acting where his own particular division might happen to be concerned.

BAILIFFS DISQUALIFIED.—Bailiffs of Division Courts are disqualified from being elected to sit in municipal councils.

ACTIONS BARRED.—A judgment in a Division Court is a bar to an action on the same subject matter in any other Court, except in actions for injury to property, real or personal, arising therefrom. A judgment against one of two or more debtors, or joint contractors is, though unsatisfied, a bar to any action brought against others for the joint debt.

EFFECT OF JUDGMENT.—A defendant against whom a judgment is recovered is estopped from denying the indebtedness found to be due by the judgment.

INJUNCTIONS.—Section 75 sets forth that every Division Court shall, as regards all causes of action within its jurisdiction for the time being, have power to grant in any proceeding before such Court such relief, redress or remedy, either conditional or absolute, including the power to relieve judgment against penalties and forfeitures.

By section 1 of the Act of last session, 61 V. 1897, it is provided that nothing in the foregoing section shall confer or be deemed to have conferred on a Division Court jurisdiction to grant injunctions, in cases otherwise within the competency of the Court.

INTERPLEADING.—When a bailiff seizes property and finds that there is an incumbrance or lien thereon, it is his duty, forthwith, to notify the party who issued the process. If the latter insists upon the bailiff's maintaining the seizure it shall be incumbent upon him to deposit with the clerk a sufficient sum to indemnify the clerk and bailiff against their costs of an interpleader, and in the event of his not doing so, the bailiff may, in his own discretion, abandon the seizure.

In case the claimant so desires, he may deposit with the bailiff an amount equal to the value of the property seized, or to the amount for which the seizure has been made, whatever shall be the lesser sum. The money is to be paid into Court to abide the decision of the Judge. See Rule 35.

MONEYS PAID INTO COURT.—Section 302 and Rule 163 are identical as to the disposal of moneys paid into Court. The section of the Act requires that the notice shall be given upon payment of any sum whatever. Where an order is made for payment by instalments, some clerks have contracted the habit of not giving the notice until the instalments accumulate. This is a mistaken view of their duty. The notice should be given upon the payment of each instalment. Of course the clerk is entitled to his postage.

COSTS IN THE CAUSE.—The costs of all proceedings, which form part of the regular proceedings in the cause, are generally understood as costs in the cause, and the party entitled to costs receives them from the opposite party.

TRANSMITTING—POSTAGE.—When a clerk is required to give notice of a new trial or to transmit papers, he is entitled to the necessary postage together with his fees at the time. The rule in this respect is that the clerk shall act on receiving fees and necessary postage. See Rule 283a.

Where papers are sent to the Judge, and which will have to be returned by him, the necessary stamps for return postage should be enclosed.

It is required by Rule 153 that every clerk upon being furnished with the necessary postage, or post card, shall answer promptly all reasonable enquiries touching suits by parties thereto, their solicitors or agents.

FORFEITURE OF FEES BY BAILIFF.—If a bailiff omits to make return of service of summons within the six days, as required by the rule (183), he forfeits his fees; neither can they be charged as costs in the cause.

CORRESPONDENCE.—Correspondence with the inspector's department is always promptly attended to. When answers are sent to letters received from the department, the number of the official communication should be given. Neglect to do so, where the correspondence with the same party has reference to separate suits and different subjects, delays matters and leads to trouble and confusion. Suitors and solicitors as well as officers of the Courts should specially note this.

Some clerks and bailiffs are constant offenders in this respect. Their carelessness, as they should know, in small details of duty of this kind is no recommendation of their attention to duties of greater importance.

Sometimes officers when writing for advice and instructions in certain circumstances, state hypothetical or suppositious cases of A., B., C., etc. This is quite wrong. In all cases the style of cause should be given, and the particulars, with dates, etc., taken from the procedure book.

COMPLAINTS.—All complaints against officers should be sent direct to the office of the inspector. The name and number of the Court, and the name of the officer against whom complaint is made should be given. Also the nature of the complaint, the dates and amounts and style of suit, where possible. Attention to these particulars will facilitate the promptness of the enquiry.

The receipt of money by a deputy would render the sureties responsible.

Wherever by the Act or rules a duty is imposed upon a clerk or bailiff, and he neglects that duty, and the person to whom he owes the duty is damaged because of the want of care upon the part of the officer, the sureties will be liable.

As a general rule damage is the essence of the action, and if the evidence shows that had the duty been performed the plaintiff would have derived no benefit, the action must fail. Nominal damages, however, may be given in cases of proved or wilful neglect.

COVENANTS.—The form of covenant has been amended so as to place beyond any doubt the liability of the clerk to the bailiff for his fees. The words introduced are as follows: "And shall pay over to any bailiff or bailiffs of the Division Court the fees to which he or they may become entitled under the tariff of fees, unless where the clerk and bailiff otherwise agree in writing."

Officers of the Courts having the security of guarantee companies are required to file the renewal receipts with the clerk of the peace periodically as received. The clerk of the peace is entitled to a fee of 50 cents for the filing.

TAXATION OF COSTS.—Sometimes unnecessary delay in taxing costs takes place for want of the proper affidavit of disbursements to witnesses. As soon after the Court as possible the clerk should receive from the successful party an affidavit of his disbursements to witnesses. The affidavit may be made before the clerk of any Division Court, and forwarded by mail or otherwise to the clerk in whose Court the judgment was rendered, and may be made by the party or his agent. At latest the clerk should be placed in possession of it the day before the execution is due, according to the order of the Court, as he has commonly directions at the time of entering the suit to proceed and collect the amount claimed, which dispenses with a special direction to sue out an execution, when the time given by the Judge has expired. Where execution is "forthwith," the successful party should be afforded a reasonable time in which to put in this affidavit. And in case of a nonsuit or judgment for defendant, the defendant cannot be restricted as to time.

REVISION OF TAXATION.—The proper practice for revision of taxation is for the party dissatisfied to give notice to the opposite party and the clerk of the Court of his intention to have the Judge revise the taxation of costs at an appointed time. The papers in the case should of course be laid before the Judge.

RESPONSIBILITY FOR COSTS.—The fees upon every proceeding are payable in advance. But if the clerk chooses to give credit he waives the benefit of the section. Moneys coming into his hands for a particular person would, as against that person, be deductible from or chargeable with the fees so due by him to such clerk. A person entering a suit for another, and becoming responsible for costs, should receive the money when made, independently of any claim the clerk might have against the suitor.

The clerk is not bound to pay a defendant who has succeeded his witness fees out of money deposited by plaintiff towards costs. If a clerk is indebted to a bailiff for fees in other suits, the bailiff has on that account no right to withhold moneys collected by him.

ENFORCING PAYMENT OF FEES.—Payment of fees may be summarily enforced, if not paid in the first instance, by order of the Judge, by execution, in like manner as a judgment of the Court and by the same ways and means. The defaulting party must have an opportunity to be heard. There should be a summons to show cause.

REPLEVIN.—In all actions of replevin the jurisdiction now extends to \$60. Heretofore it was limited to \$40. In connection with section 70, see Rules 39 to 67, inclusive.

ENDORSEMENT ON SUMMONS.—Form 48 is that required by Rule 24, as well as the section of the Act, for notice.

SUBSTITUTIONAL SERVICE.—Rule 57, as well as section 104, provides for substitutional service, and Rule 76 provides that the Judge in any garnishee proceeding may order that the service need not be personal.

JUDGMENT BY DEFAULT.—See Rules 101, 104 and 117, in connection with section.

SET-OFF AND STATUTORY DEFENCES.—Together with section, see also Rules 105 to 112.

GARNISHMENT OF DEBTS.—Where an exemption from liability to garnishment is claimed, it is necessary for the primary debtor to establish the fact of such exemption. See

Rule 71. See also Rules 73, 74, 75 and 76 as to particulars of statement required.

Service of the summons on the garnishee binds the debt until the hearing. See also Rule 79.

As to execution costs, see Rule 84.

CONFESSION OF DEBT.—See Rule 102 as to requirements of confession of debt, and as to application for judgment thereon. Unless made within three months, no execution can issue without an affidavit.

NOTICE OF NULLA BONA RETURN.—Clerks should be careful to give notice to plaintiff of return of *nulla bona* in case of execution on transcript of judgment. Form 199 should be used.

JUDGMENT DEBTORS.—The Act relating to Division Courts passed at the last session of the Legislature, 61 V. 1897, amends section 75 of the Division Courts Act, R. S. O. 1897, in the following particulars:

Where a judgment has been recovered, which but for the enactment of the 5th section of chapter 14 of 60th V., now sub-section 2 of section 79 of the Division Courts Act could not have been recovered in the Division Court, the Court or Judge shall not commit the debtor to gaol upon or in connection with a judgment summons, where a judgment debtor could not have been committed in respect of a judgment recovered in a higher Court. In other words, where the principal and interest of a debt are sued for separately.

Sub-sections 2 and 3 of the Act are repealed and the following substituted:

“If he attends and refuses to be sworn, or to make answer to such questions as may be put to him, and which in the opinion of the Judge are proper questions.”

The amendments do not apply to claims or suits upon debts contracted before the passing of this Act.

Sub-section 5 is repealed and the following substituted: If it appears that the judgment debtor had, when or since the judgment was obtained against him, sufficient means and

ability to pay the debt or damages or costs recovered against him, either altogether or by instalments which the Court in which the judgment was obtained has ordered, without depriving himself or his family of the means of living, and that he has wilfully refused or neglected to pay the same as ordered, the Judge may, if he thinks fit, order such party to be committed to the common gaol of the county in which the party so summoned resides or carries on business, for any period not exceeding forty days.

Beyond the modification of the language of the section, it is not clear what the amendment has accomplished. The judgment summons remains, and the same power of committal as heretofore still rests within the discretion of the Judge.

JUDGMENT SUMMONS.—A party failing to attend according to the requirements of the summons, shall not be liable to be committed unless the Judge is satisfied that the non-attendance was wilful.

PAYMENT FOR ATTENDANCE.—Rule 202 provides that in case a judgment debtor, who resides more than three miles from the place of the sitting of the Court, is summoned and does not attend, such non-attendance shall not be considered wilful unless he shall have been paid or tendered when summoned a sum equal to 75 cents for his day's attendance, and 10 cents for each mile from his place of residence to the place of sitting of the Court.

JUDGMENT BY DEFAULT.—Where an order has been made by the Judge empowering the clerk to sign final judgment under section 116, the Judge may within seven days after making the order and upon good grounds shown, set aside the order upon such terms as he thinks reasonable. This is also an amendment made by the Act of last session—61 Vict. 1897.

JUDGMENTS OF THE SUPERIOR COURT.—Section 9 of the same amending Act provides that no action shall be brought in the Division Court upon any judgment, decree

or order for the payment of money made by the High Court or the County Court, where execution may issue in respect of the same. This amending Act is given in full. See index.

GENERAL INFORMATION.

CONCURRENT SUMMONSES.—Rule 15 states that only the cost of the summons actually served shall be allowed on taxation, unless the Judge directs otherwise. Summons can only issue where there are more defendants than one residing in different counties.

WARNINGS.—No fee accompanies the service of adding future days of sittings, or warning notices on summons.

NOTICES.—The clerk is only entitled to a fee for such notices as are required by the Act or Rules, or under order of the Judge to be given. The clerk is entitled to the necessary postage, but not to a fee for mailing.

COPY OF CLAIM.—Under the old tariff this item was charged to plaintiff, when not furnished by him, the fee allowed being 20 cents. The present tariff allows 25 cents to be charged, and the words "to be paid by the plaintiff" are omitted. The fee is to be taxed against the party ordered to pay costs.

SET-OFF, OR COUNTERCLAIM.—The fee allowed for this item (5) has been increased from 20 to 25 cents, and is now also to be taxed against the party ordered to pay costs; heretofore it had to be paid by defendant.

WHERE CASE SETTLED.—Where the case is settled, before the issue of summons, no fee can be claimed by the clerk for entering return.

Where a case put on the Judge's list is settled, before being called in Court, the clerk would not be entitled to the fee of 25 cents allowed by item 20 of tariff. The case having been withdrawn by the parties from the Judge's authority, he could make no order for settlement.

Settlement by the defendant, or payment by him into Court of the amount, must be made with or to the clerk of

the Court in which the suit has been entered, or he must be notified.

WHEN ADJOURNED.—Where a cause is adjourned no order of adjournment shall be served, except by direction of the Judge.

FEE ON CONFESSION.—The fee of 10 cents for taking confession does not include the affidavit and administering oath, for which a fee of 25 cents is allowed.

CERTIFIED COPIES.—The fee for furnishing certified copies is 5 cents per folio of 100 words—together with 25 cents added for clerk's certificate.

COPIES FOR JUDGE.—Copies of papers for transmission to the Judge, and for which no fee is otherwise provided, carry a fee of 10 cents each.

DEFENCE.—There is no fee now payable for entering a defence. Item 13 of the new tariff gives a fee of 15 cents to the clerk for every notice required to be given by him.

AFFIDAVITS.—It is a condition that the affidavit has been prepared by the clerk to entitle him to the fee of 25 cents.

ENTERING JUDGMENT.—The one fee of 50 cents includes all services of recording and entering judgment. The Judge may postpone giving judgment until it is convenient for him to give same. When received by the clerk of the Court, the latter is obliged, forthwith, to enter the judgment and notify the parties. The giving of the required notices would be the only additional charges to which the clerk would be entitled.

SUMMONING JURORS.—The fee for this service is now \$1.25, which includes a copy for each jurymen. The party giving notice requiring a jury shall at the same time deposit with the clerk, towards costs in the cause, the proper fees for the expenses attending the summoning of the jury.

Where there are several cases tried by a jury, the costs of summoning should be proportionately divided.

JUDGE'S JURY.—The fee for calling a Judge's jury is 25 cents; and the section as amended now reads, "and each juror so called and sworn shall be paid the sum of 10 cents."

In provisional judicial districts, where no jury fund is provided, the Judge's jury is that resorted to.

DISCONTINUANCE OF ACTION.—Where a plaintiff discontinues the action, he shall give notice in writing to the clerk and defendant, and the latter may apply to the Judge for an order for costs.

Where, in a contested case, the defendant has prepared for trial and before the Court sits the action is withdrawn, the Judge may order payment of all the costs and also counsel fee and disbursements.

TRANSCRIPT.—A transcript of judgment to another Court must issue from the Court in which judgment has been originally recorded, and should in all cases be mailed direct to the clerk receiving transcript.

FOREIGN FEES ON TRANSCRIPT.—The proper amount of a foreign clerk's fees on notice of *nulla bona* return to an execution issued under transcript of judgment would be 15 cents for receiving, 50 cents for execution, 15 cents for entering bailiff's return and 15 cents for notice of return. Postage and registration of course also to be added. Some clerks fall into the error of putting costs, in every case, at \$1.03, and collecting that amount from the defendant, whereas, they are only entitled to collect 80 cents—that is, receiving 15 cents, issuing 50 cents, and entering return 15 cents. No notice or postage is required where a defendant pays.

After a transcript has issued, the home Court has no further right to deal with the case, except by order of the Judge, or under 52 V. c. 12, s. 24, which requires the filing of an affidavit of facts with the clerk to warrant the issue of any further process. He cannot, either as agent for the

judgment creditor or otherwise, order that the money made shall be transmitted to himself or to any other person.

As there is now no transcript issued to the County Court, such portion of Rule 134 as refers thereto has no proper application.

Rule 145 as to place of clerk's office is rendered nugatory by section 9, which empowers the Lieutenant-Governor in Council to designate the place where the office shall be situated.

THE ORDER BOOK required to be provided by Rule 146 should be brought into constant requisition by clerks. It is at once a convenience and a protection to themselves.

Rule 147 has been superseded by the form of procedure book given in Schedule B to the Act.

Rule 161 is amended by section 150, as to the Judge postponing judgment.

EXECUTION AGAINST LANDS.—In case an execution against goods has been returned *nulla bona*, and the sum remaining unsatisfied on the judgment amounts to \$40, an execution against the lands of the debtor may be sued out, and directed to the sheriff of the county in which the return had been made, or to the sheriff of any other county in the Province in which lands of the party in default may be situated.

The sheriff must make his return direct to the clerk of the Court, to whom money made is to be paid over.

No execution against lands can issue to the sheriff until a *nulla bona* return has first been made.

PROMPTITUDE IN RETURNS REQUIRED.—The fee of 30 cents, provided by item 28 of tariff—receiving papers from another division for service, etc.—is coupled with the condition—"if the return made promptly, not otherwise"—and should be borne in mind by the officers of the Court.

FEES AND CHARGES.—The fee for making out a statement of costs in detail has been increased from 5 to 10 cents, and must show items of bailiff's fees allowed, if any.

The clerk shall determine the number of witnesses to be allowed, when taxing costs. He should satisfy himself that the witnesses attended and that the claims made for witness' fees are just, and he may also require to be furnished with an affidavit of disbursements.

On returning process received from foreign Court, the clerk should give a correct statement in detail of the items of all charges made for fees and disbursements of service of or execution of process.

DUTY OF CLERK AS TO BAILIFF.—It is the duty of the clerk to see that his bailiff is vigilant in the performance of his duty; to see that all returns of process are made promptly, and to enforce the penalties for negligence by disallowing the bailiff his fees, where the latter officer is culpable and does not make returns within the time required.

WORDS FOR THE BAILIFF.—Recent changes in the tariff will be found upon the whole more favourable to the bailiff than formerly. What are considered "reasonable disbursements" are now more accurately defined. So are the items relating to bailiff's poundage. In this connection the officer should never fail to remember that it is only after seizure he can justify his claim.

Under Rule 298, where the party having the control of an execution or attachment insists upon the bailiff making an attempt to find property, whereby mileage and expenses are incurred, the clerk can require that a deposit should be made with him of the amount of the bailiff's fees; and provided a proper (although unsuccessful) endeavour shall have been made, to the satisfaction of the clerk, the bailiff is entitled to his mileage. This is a decided improvement on the old state of things, when, no matter what trouble a bailiff took or expense he might have incurred, he got nothing for his expenses unless he was fortunate enough to make the money.

CLERK'S FEES, AS PER TARIFF.—The fees to the clerk under items 1 and 2 remain the same as under the old tariff.

So in replevin and interpleader suits, the value of the goods regulates the fee.

In item 3, copy of summons, the fee is increased from 20 to 25 cents.

Copy of claim—a like increase has taken place, and copy set-off, item 5, the same increase, from 20 to 25 cents, has been made.

These two latter items may now be charged as costs in the cause. Formerly they were charged to either the plaintiff or defendant.

In item 6—receiving and entering—no change has been made, the fee remains at 15 cents.

No fee may now be charged for entering defence. The 25 cents allowed by item 7 of old tariff has been dropped.

Taking confession of judgment, item 8 of old tariff, is now item 7. The fee remains the same.

Item 9—formerly item 10, furnishing copies of papers—has been modified. A fee of 5 cents per folio of 100 words has been substituted, and a charge of 25 cents is allowed for the certificate by item 10.

Item 11 gives 25 cents for certifying under the seal of the Court, and for making up memorandum of judgment and costs against a judgment debtor for the judgment creditor.

The 10 cents each for copies of papers for which no fee is otherwise provided, required for service or transmission to the Judge, remains as heretofore. If the document exceeds two folios, 5 cents per folio may be charged.

Items 13, 14 and 15 remain the same as 11, 12 and 13 of the old tariff.

The fee allowed under item 15—entering judgment—does not apply to any proceeding on judgment summons. The one fee of 50 cents includes the service of recording at the trial and entering order made in the procedure book. If a garnishee proceeding, before judgment, the fee of 50 cents will be allowed in each case for the judgment in respect of

the primary debtor, and for the adjudication against the garnishee.

Item 16—subpoena to witness—this item has been increased to 25 cents, from 15 cents allowed under the old tariff. The fee of 5 cents each for copies remains the same.

The \$1.25 allowed for summoning jury and copies required for each jurymen is an amendment to the old tariff, where the item (15) was summons to each jurymen, 10 cents.

Calling and returning jury, ordered by the Judge, is made item 19, and carries a fee of 25 cents.

The fee on order of reference and orders requiring signature of the Judge, item 20 (17, old), remains unchanged, except made to include the final order on judgment debtor's examination.

Item 21 gives the same fee as heretofore (item 18) of 25 cents on transcript. The transcript to County Court being done away with, there is, of course, no fee now.

The fees on execution and warrant and renewals, 23 and 24, remain as heretofore.

Item 25 permits a charge of \$1 for bond, including affidavit of justification and execution. Formerly 50 cents was the fee under item 21 of old tariff.

Items 26, 27, 28 and 29 (new), 22, 23, 24 and 25 (old), remain unchanged as to the fee allowed.

Item 30 (26, old), taxing costs, 25 cents, remains the same, but is only chargeable "after judgment has been pronounced."

The additions are:

Item 31—Making out statement of costs in detail, 10 cents. This will include the bailiff's fees, and the charge can be made only to the party at whose request the statement is furnished.

Item 32—Taxing bailiff's costs—relates to bailiff's fees when the goods in his possession have been taken by the sheriff under the Creditors' Relief Act.

Neither of the latter two items applies to statement of costs endorsed on the summons, for which no fee can be demanded.

BAILIFF'S FEES, AS PER TARIFF.—The fee of 15 cents, for calling parties and their witnesses, is extended to the hearing of judgment summons, for which the same fee is allowed.

The fees for enforcing writ (item 6), remain the same as heretofore. Item 6 (and not item 1) now settles the fee to which a bailiff is entitled for enforcing writ of replevin.

Fees under "The Creditors' Relief Act" shall be taxed according to the tariff. In such cases all costs and disbursements of the bailiff shall be a first charge on the goods, and shall be paid by the sheriff on demand, after being taxed by the clerk.

The mileage item, under item 8 in the old tariff, is now divided into two items, as will be seen on reference to table.

Going to arrest under warrant, when arrest is made, 12 cents per mile.

Carrying delinquent to prison, including all expenses, 20 cents per mile.

Practically the fees are the same as heretofore.

The language of item 7 of the new tariff varies a little from that of the old, but the mileage allowed is the same—12 cents for every mile, one way. This has been construed not to permit of a charge being made for a fraction of a mile.

The items for making out schedules of property seized, including affidavit of appraisal, remain unchanged at 30, 50 and 75 cents. So with the fees of 50 and 15 cents for taking bond and giving notice.

Item 13 and sub-items define reasonable allowances and disbursements, specifically and in detail, which was not the case in the old tariff.

By item 14 the bailiff's poundage is given, if the execution be satisfied in whole or in part, after seizure and before sale, at three per cent. upon the amount directed to be levied,

or on the amount of the value of the property seized, whichever is the lesser sum.

The full poundage of 5 per cent. is allowed upon the amount realized from property necessarily sold.

Where a second execution is received while goods under seizure, a bailiff is entitled to a fee for "enforcing" only.

A bailiff gets his mileage on going to seize, but none on going to sell. It is considered that the poundage covers the latter.

Where a bailiff has several summonses and executions in his hands in different suits, and serves and executes them in one journey, he is entitled to mileage in each case and to his proper fees.

Where a bailiff travels to serve several defendants in the same suit, he is not entitled to full mileage from the clerk's office upon each, but only to the mileage from point to point on the distance actually and necessarily travelled.

A bailiff is entitled to no fees whatever where by his own act he abandons the seizure, except as provided by Rule 298.

A bailiff has no claim to fees when he acts upon process that has expired.

No mileage is allowed for unsuccessful attempts to effect service.

MISCELLANEOUS NOTES.

An execution cannot be legally enforced, nor a warrant of commitment legally executed by a bailiff's assistant; only by the bailiff himself or his properly appointed deputy can this duty be performed.

ACCEPTING CHEQUES.—A clerk accepting cheque on private bankers and giving receipt for money is liable though bankers fail.

ADDING INTEREST.—Clerks should be careful to add and collect interest. Interest is to be charged up to date of payment.

COUNSEL FEE.—Section 214 of the Act directs that where counsel, solicitor, or agent has been employed in a suit, a fee of \$5 or \$10 may be allowed. Rule 288 says that the Judge shall not direct a fee to be taxed unless such agent is a barrister or solicitor.

BAILIFF'S FEES TO BE PAID TO CLERK.—It is provided by section 60 that at the time of issue of execution the bailiff's fees thereon shall be paid to the clerk. This is for the protection of the bailiff; what the bailiff's fees may be being a matter of uncertainty. If he finds nothing to seize, there may be no fees payable, mileage in such case not being allowed, except under Rule 298. But where parties settle, after seizure, to the prejudice of the bailiff, the latter is protected.

PROCESS MUST NOT BE DELAYED.—Once acted upon, process of the Court cannot afterwards be delayed until fees are paid.

WARRANTS OF COMMITMENT continue in force for six months from date. A warrant may be renewed for a further period not exceeding six months.

RETURN WITHIN SIX DAYS.—When a bailiff forfeits his fees, if return not made within six days after service, the day of service is not included.

ATTENDANCE AT CLERK'S OFFICE.—An arrangement should be made by a bailiff for regular attendance at the clerk's office to receive papers. The copies for service should be carefully compared with the originals. Clerks should assist the bailiffs of their Courts in seeing to this.

ISSUING COMMISSIONS.—Formerly commissions had to be returned to the County Court and costs had to be taxed on the County Court scale. This is no longer the case. Returns are now made direct to the clerk of the Division Court, and the costs are in the discretion of the Judge. The rules of the Supreme Court of Judicature apply to all commissions out of Division Courts.

JUDGE'S POWER OF REMOVAL.—Clerks and bailiffs were appointed by the County Court Judges up to March, 1880. The Judges had then full power of removal of all officers. Now a Judge may remove only a clerk or bailiff within his county, who was originally appointed by a Judge, and can do no more than suspend an officer appointed by the Government.

DISQUALIFICATION.—Clerks cannot practice as barristers or solicitors, nor can they appoint such to act for them as deputies. This should be borne in mind by clerks when applying for leave of absence.

LEAVE OF ABSENCE.—In case of sudden illness or unavoidable accident the clerk may, with the approval of the Judge, appoint a deputy to act for him. The inspector may grant leave of absence (not exceeding two months) to officers for any sufficient reason.

The appointment can only be made by a bailiff temporarily where he is unable to perform the duties, with the approval of the inspector.

SERVICE OUT OF DIVISION.—If a bailiff intends to refuse to serve or execute any process out of his division, he should notify the clerk immediately and refuse to receive the writ. If he receive it with the intention of acting, he is responsible for its execution.

JUDGMENT.—The decision of the Judge, if not pronounced in Court, only becomes a judgment when duly entered in the procedure book by the clerk. When receiving a postponed judgment clerks should bear this in mind and forthwith make the necessary entry.

SOLICITOR'S LIEN.—A set-off will not be allowed to the prejudice of a solicitor's lien for costs. A solicitor by whose efforts judgment has been recovered has a lien thereon for the costs of the action in which it was recovered.

DEPUTY JUDGE.—A deputy Judge cannot give judgment after the expiration of the period for which he was appointed. Neither is he a justice of the peace, as the senior and junior Judges are for every county and part of a county.

JUDGMENT OVER TWENTY YEARS OLD.—An action is not maintainable upon a judgment over twenty years old without a payment or acknowledgment in the meantime. If execution has issued on a judgment within six years, there is no necessity for a revival within twenty years.

EXAMINATION OF GARNISHEE.—A garnishee may be examined as a judgment debtor.

NEW TRIAL.—Application for a new trial must be made according to Rule 283, and care should be taken in observing its requirements. The following are grounds for granting a new trial:—

Improper admission or rejection of evidence.

Improper nonsuiting of plaintiff, misdirection or non-direction of jury.

Perverse verdict, or verdict against the weight of evidence.

Verdict too small or too great.

Surprise and discovery of new evidence.

The Judge, of course, has power to grant a new trial upon the ground that his judgment was wrong either in law or in fact upon the evidence before him.

APPEAL.—An appeal lies from either the granting or refusal of a new trial.

The application for stay of proceedings should be made by the party proposing to appeal.

PAYMENT INTO COURT.—Payment to clerk will amount to payment into Court.

ARBITRATION.—Parties cannot be compelled to arbitrate. When ordered, the consent of the parties is necessary. The Judge may impose terms. Trustees and executors may submit.

If the costs are to abide the event, the arbitrator cannot make any disposition of them.

LIABILITY OF JUDGE.—A County Judge is not answerable in an action of trespass for an erroneous judgment, or for the wrongful act of his officers, but he is responsible for an act done by his command when he has no jurisdiction.

As regards Judges and judicial officers, the general rule is that if they do an act beyond the limit of their authority, causing injury to another, they are liable for it. But if done within that limit through an erroneous or mistaken judgment they are not liable.

POSTAGE.—Stamps for return postage must now be enclosed by parties asking for information from the officers of the Court. Heretofore clerks were compelled to answer by postal card where no stamps had been received. Now they are not obliged to answer unless return postage has been sent.

LEGAL TENDER.—Strictly speaking, a tender to be legal should be made in legal coin. Up to \$10, it may be made in silver, and to 25 cents in coppers. Bank notes are a good tender, if not objected to. So is a tender made in the form of a cheque, when no objection is made. A tender is not good where the money is not produced.

A plaintiff may be nonsuited after plea of tender, if he does not appear. Notice of the plea and payment should at once be communicated by the clerk to the plaintiff.

MONEY IN COURT.—The plaintiff cannot get money paid into Court until the suit in which it is paid is determined, unless the Judge otherwise orders.

STATUTE OF LIMITATIONS.—The statute commences to run when the right to bring an action has accrued. In all ordinary cases of account, promissory note, and mercantile transactions, suit shall be commenced within six years.

Actions for rent upon an indenture of demise, actions upon bond or other specialty, or upon a recognizance, must be commenced within twenty years.

Action upon an award, when submission is by specialty, for an escape, for money levied on execution, within six years.

Actions for penalty, damages, of sums of money given to the party aggrieved by any statute, within two years.

Actions for rent, which term is made to include all annuities and periodical sums of money charged upon or payable out of land, and actions for the recovery of land, within ten years.

SUITS BY MINORS.—In suing for anything but wages, a minor must procure the attendance of a next friend at the office of the clerk of the Court at the time of entering the suit, who must undertake to be responsible for costs. A minor has six years to bring an action after attaining his majority.

MARRIED WOMEN.—A married woman may be surety for an officer of the Court, provided she possesses sufficient estate. Married women are not liable to commitment on judgment summons. They may sue and be sued. A married woman may sue her husband for loans made him after marriage.

CLAIMS LESS THAN \$15.—Should a summons for a claim less than \$15 not be personally served, a plaintiff would have to prove his claim to entitle him to judgment.

REFERENCES IN RULES CORRECTED.

In the revision of the statutes (R. S. O. 1897), the consolidation of the Division Courts Act and the several amending Acts passed session after session during the ten years since the previous revision, necessarily led to changes in the sections of the Act as it now stands. Consequently the references in some of the rules, being to the sections of the Act as it stood in 1887, would be found misleading. The following are therefore given as the corrected references:—

Section 101 is section 104, R. S. O. 1897.

" 82	85	"
" 83	86	"
" 98	102	"
" 117	120-4	"
" 109	114	"
" 177	182	"
" 178	182-3	"
" 269	276	"
" 110	114-5	"
" 103 & 104	107-8	"
" 111	115	"
" 215 & 217	221-3	"
" 235	243	"
" 240	247	"
" 123 & 126	127 & 130	"
" 146	152	"
" 208	214	"

REVISED

RULES, ORDERS AND FORMS

OF THE

Division Courts of the Province of Ontario.

ADOPTED BY THE BOARD OF COUNTY JUDGES.

Came into force 1st July, 1894.

RULES.

TIME OF OPERATION.

1. The rules of practice, and the forms now in use in the several Division Courts shall, on and from the first day of July, A. D. 1894, cease to be used, and in lieu thereof, the following shall, on and from such day, be the rules, orders and forms in force and used in said Courts. But any action, process, order, judgment, or proceeding, pending, existing or in force in any Division Court at that time, shall not be thereby affected, but shall continue and remain, and so far as necessary, be proceeded with under these rules and forms, if applicable, or otherwise under the rules and forms hitherto in use, or as the Judge may direct.

INTERPRETATION.

2. In construing these rules and forms, unless otherwise declared or indicated by the context, the following words shall have the several meanings hereby assigned to them over and above their several ordinary meanings, viz.:—

(1) The word "Act" shall mean The Division Courts' Act (Revised Statutes of Ontario, chapter 51) and any amending Act or Acts.

(2) The word "party" shall mean a party to a suit or proceeding, and shall include every person served with notice of, or attending any proceeding, although not named in the summons or particulars of claim.

(3) The word "person" shall include any body corporate or politic, or party, and the heirs, executors, administrators or other legal representatives of such person, to whom the context may apply according to law.

(4) The word "executor" shall be held to embrace and mean "of the last will and testament," and shall extend to a party acting as such of his own wrong, and the word "administrator" shall be held to embrace and mean "of the property of, etc."

(5) Words importing the singular number, or the masculine gender only, shall include more persons, parties or things of the same kind than one, and females as well as males, and the converse.

(6) The word "oath" shall be construed as meaning a solemn affirmation, or statutory declaration, whenever the context applies to any person and case by whom and in which a solemn affirmation or statutory declaration may be made instead of an oath, and in like cases the word "sworn" shall include the words "affirmed" and "declared."

(7) The words "Home Court" and "Home Division" shall mean, respectively, the Court and division from which process originally issued.

(8) The words "Foreign Court" and "Foreign Division" shall mean, respectively, the Court and division into which process is issued from another Court.

(9) The words "Judge," "Clerk" and "Bailiff" shall be taken to extend and apply to the junior, deputy, or acting Judge, or deputy or acting clerk, or deputy or acting bailiff (as the case may be or may require).

(10) "Plaintiff" shall include every person asking any relief (otherwise than by way of counter-claim as a defendant) against any other person by any form of proceeding, whether the same be taken by action, suit, petition, motion, summons or otherwise.

(11) "Petitioner" shall include every person making any application to the Court or Judge either by petition, motion or summons, otherwise than as against any defendant.

(12) "Defendant" shall include every person served with any writ of summons or process, or served with a notice of, or entitled to attend any proceedings.

(13) The word "county" shall include two or more counties united for judicial purposes, or for purposes to which an enactment relates.

(14) The words "the claim" shall mean the demand, or the subject matter for which any suit or proceeding is brought or instituted in a Division Court.

(15) The word "process" shall mean any summons, writ or warrant issued under the seal of the Court, or a Judge's summons or order.

(16) "Court" means the Division Court having jurisdiction in the action, matter or proceeding.

(17) "Clear days" means that in all cases in which any particular number of days is prescribed for the doing of any act, or for any other purpose, the same is to be reckoned exclusive both of the first and of the last day.

(18) "Judgment" means the final decision of the Court or Judge in any action, or the entering of final judgment by the clerk, when a claim is not disputed, as provided by section 109 of the Act.

(19) "Order" means the final decision of the Court or Judge in any matter, and also any decision of the Court or Judge other than final in any action or matter.

(20) "Security covenant" means the covenant required to be furnished by a clerk or bailiff of a Division Court, in pursuance of any statute requiring security from any such officer.

(21) "Goods, chattels and property" mean, goods, chattels, cattle, sheep or other animals or property, money, money's worth and effects seized or seizable in execution or upon an attachment, or which may be distrained or made exigible to the satisfaction of a judgment in the Division Court.

(22) For the purposes of section 101 of the Act, the word "agent" shall be held to include—

- (a) In the case of a railway company, a station-master having charge of a station belonging to the railway company.
- (b) In the case of a telegraph company, a person having charge of a telegraph office belonging to the telegraph company, and
- (c) In the case of an express company, a person having charge of an express office belonging to the express company.

(23) Otherwise than as hereinbefore provided for, The Interpretation Act of Ontario, and the interpretation clauses of The Judicature Act shall apply to these rules and forms, unless there be anything on the subject or context repugnant thereto.

(24) The word "folio" shall mean one hundred words.

CLAIM AND PARTICULARS.

3 Every claim should show the names in full, and the present or last known place of abode of the parties, and must be legible, and delivered to the clerk at his office. But if the plaintiff is not acquainted with the defendant's name, in full, he may describe him by his surname, or by his surname and the initial letters of his Christian name, or by such name as he is generally known by. The defendant shall, in the process, be described as he is in the claim, and such description may be taken to be valid, and all subsequent proceedings may be taken and had in conformity with such description; provided that the Judge may, upon application of any party, and upon such terms as he may deem just, make any amendment as to such name or description.

This rule is subject to the provisions of the Act in case of co-partners.

4. The claim shall contain a statement of the particulars thereof, or of the facts constituting the cause of action, and of the sum or sums of money claimed in respect thereof. Such particulars shall be framed in ordinary and concise language. The Judge may, on such terms as he may deem just, permit or require such statement to be amended, or further or other particulars to be furnished.

5. In any suit brought under the provisions of the 82nd section of the Act, the claim shall contain a statement (form No. 17) or to the like effect.

6. In actions in a Division Court, against officers and their sureties, on the officers' security covenant, the claim shall be as in form No. 18, and the proceedings shall be the same as in ordinary cases.

7. Where the excess is abandoned, it shall be done, in the first instance, and in the claim. Where such has not been done, the Judge may, upon such terms as he shall see fit at any time thereafter, but before judgment, permit such abandonment, in which case an entry thereof shall be made in the proceedings.

PROCESS.

8. All first process, with the exception of warrants of attachment issued by justices of the peace, shall be issued under the seal of the Court, be signed by the clerk, dated the day on which the claim is entered for suit, and numbered to correspond with the claim on which it issues.

9. The first process issued in a suit under the seal of the Court shall, for all purposes, be held to be the commencement of the action.

10. The first process for a recovery of a debt or money demand, or for a tort or other personal action, may be a summons and called "ordinary summons." (Form 49).

11. In actions for the recovery of a debt or money demand, where the particulars of the plaintiff's claim are given with reasonable certainty and detail, the first process may be a summons, form No. 47, which shall be called, "special summons."

12. Where an *alias* or *pluries* process becomes necessary, it shall be dated on the day on which it actually issued.

13. Where the plaintiff sues under the 229th section of the Act, the proceedings may be by "ordinary summons," or "special summons." At the end of the particulars or in addition to the notices and warnings on the summons, the notices and warning set forth in form No. 52 shall be given.

14. Leave to bring an action under the 83rd section of the Act may be granted by the Judge, on production of an affidavit, form No. 23, and in the summons it shall be stated "Issued by leave of the Judge."

15. Where there are more defendants than one, and they reside in different counties, concurrent summonses may issue for the service of the defendants residing out of the county in which the action is brought, but the costs only of the summonses actually served shall be allowed on taxation,

unless the Judge directs otherwise; and such concurrent summonses shall correspond with the original, and be marked in the margin "Concurrent summons."

SERVICE OF SUMMONS.

16. Every summons shall be returnable on the eleventh day after the day of service thereof upon the defendant, in case the defendant, or one of the defendants, resides in the county in which the action is brought; in case the defendant does not reside, or in case none of the defendants, if there be more than one, reside in the county in which the action is brought, such summons shall be returnable on the sixteenth day after the day of such service.

17. The summons with a copy of the account, or of the particulars of the claim or demand attached, shall be served ten days at least before the return day thereof.

18. In case the defendant does not reside, or in case none of the defendants (if there be more than one), reside in the county in which the action is brought, the summons must be served fifteen days at least before the return day thereof.

19. In case of defendants having different or separate, and not joint interests, in an action, the summons must be served on any defendant residing out of the county in which the action is brought, fifteen days, at least, before the return day thereof.

SUBSTITUTIONAL SERVICE.

20. Where it is made to appear to the Judge upon affidavit that reasonable efforts have been made to effect personal service of the summons upon the defendant, primary debtor or garnishee, and either that the summons has come to the knowledge of the defendant, primary debtor or garnishee, or that he wilfully evades service of the same, or has absconded, either before or after the issue of summons, or is out of the Province of Ontario, but having in Ontario an

office and an agent doing business on his behalf, the Judge may, by order, grant leave to the plaintiff to serve the summons, in such manner, at such place, or upon such person, for the defendant, primary debtor or garnishee, as to him may seem proper, and may grant leave to the plaintiff to proceed as if personal service had been effected, subject to such conditions as the Judge may impose, and in the same order, the Judge may direct that all further notices and orders in the suit up to judgment may be served in the same manner as he has directed substitutional service of the summons.

21. Every summons issued against a corporation, firm or individual, not having its chief place of business within the Province, and all subsequent papers and proceedings in the action or proceeding in which the summons has been issued, may be served on the agent of the corporation, firm or individual, whose office or place of business, as such agent, is either within the division in which the summons issued or is nearest thereto.

22. Under the 83rd section of the Act, the leave to be granted for issuing a summons shall be by the Judge before whom the action is to be tried under the order, but no leave shall be given to bring a suit in a division other than the one adjacent to the division in which the party to be sued resides, but the division may be in the same or an adjoining county.

FLOODING LANDS IN CERTAIN DISTRICTS.

23. Any action under 52 V. c. 16 (Ontario), for flooding lands, where the sum claimed does not exceed \$20, may be commenced by ordinary summons, and the proceedings thereafter shall be as in any ordinary case.

NOTICE ON WRIT AS TO CHANGE OF VENUE.

24. The notice required by section 98 of the Act shall be endorsed on the summons and be signed by the clerk in the words of form No. 48.

RENEWAL OF WRIT.

25. No original writ of summons shall be in force for more than twelve months from the day of the date thereof, including the day of said date; but if any defendant therein named shall not have been served therewith, the plaintiff may, before the expiration of the twelve months, apply to a Judge for leave to serve the writ after, and notwithstanding the lapse of, the said period.

- (a) The Judge, if satisfied that reasonable efforts have been made to serve such defendant, or for other good reason, may order that the service shall be good if made within twelve months from the date of the order, and so from time to time during the currency of the further period allowed.
- (b) The writ shall in such case be renewed by being marked with the date of the day, month and year of such renewal, to be so marked by the clerk upon delivery to him by the plaintiff, his solicitor or agent, of the Judge's order.
- (c) In such case, the original writ shall be available to prevent the operation of any statute whereby the time for the commencement of the action is limited, and for all other purposes, from the date of the original issue of the writ.

AMENDMENTS.

26. In case a special summons is issued, when an ordinary summons should have been issued, or *vice versa*, the same may be altered or amended by order of the Judge, either before or at the hearing, on such terms as the Judge may direct.

ABSCONDING DEBTORS.

27. In all cases where an attachment shall issue (whether the suit be commenced by attachment in the first

instance or not), unless the defendant shall have been personally served, the hearing or trial shall not take place until a month after the seizure under the attachment, unless the Judge shall otherwise order.

28. When several persons sue out warrants of attachment against an absconding, removing or concealed debtor, each one of such attaching creditors may enter a defence, set-off or counter-claim, and call and examine, and cross-examine witnesses as to any debt or claim proved or attempted to be proved against the debtor, or as to such set-off or counter-claim, in the same way and to the same extent as the debtor himself might do, were he personally to appear and defend the suit, on any ground whatever.

29. Before issuing an attachment against an absconding, removing or concealed debtor, it shall be the duty of the clerk to see that immediately following the statement in the affidavit of the amount due to the attaching creditor, the cause and subject of such indebtedness is properly set forth according to form No. 26.

30. In case several judgments have been recovered against an absconding debtor, it shall not be necessary to issue execution upon each such judgment; but one execution against the property seized upon the attachment shall issue for the sale thereof to satisfy the judgments of those creditors, and enough of such property as shall be sufficient to satisfy the said judgments and costs, may be sold thereunder according to law. (Form No. 132a). Or if the property has been previously sold as perishable, enough of the proceeds may be applied by the clerk to satisfy such judgments and costs, without execution.

31. The proceeds of such execution, or of the sale of the property, shall, after deducting all costs, remain in the hands of the clerk, and be distributed ratably amongst such creditors as are entitled to share therein to the extent of their claims, and the surplus, if any, shall be paid to the person entitled thereto.

- (a) Where the amount levied by the bailiff, or in the hands of or collected by the clerk, is not sufficient to pay the execution debts, and satisfy the judgments of all creditors entitled to share in the distribution, with costs in full, the money shall be applied to the payment, ratably, of such debts and costs of the creditors, after retaining the bailiff's fees, and after payment in full of the costs taxed, and the costs of the execution, to the creditor at whose instance and under whose attachment or execution the seizure and levy were made.
- (b) The clerk shall, before distributing the money, prepare for examination by the debtor and his creditors, a list of the creditors entitled to share in such distribution, with the amount due to each, for principal, interest and costs, the total amount to be distributed, and the amount going to each according to such ratable distribution.
- (c) Any party entitled to or interested in any money or debt attached or made, by virtue of an attachment or otherwise, against an absconding debtor, in the hands of the clerk or bailiff, who is not satisfied with the proposed plan of distribution thereof by the clerk, may apply to the Judge for an order to correct or change such distribution.
- (d) The clerk shall deliver or send (prepaid and registered), by post, to each creditor, a notice that the said list has been so prepared, and may be examined at his office, at any time within five days from the day of the date of the notice; and that unless within ten days after the day of the date of the notice, objection to such list has been filed with the said clerk, the said list shall be binding upon all parties concerned, unless the Judge shall otherwise order.

INTERPLEADER.

32. When any claim shall be made to, or in respect of any goods or chattels, property, or security, taken in execution, or attached, under the process of any Division Court, or in respect of the proceeds or value thereof, by any landlord, for rent, or by any person, not being the party against whom such process has issued, and a summons has been issued, on the application of the officer charged with the execution of such process, such summons shall be served in such time and manner as is directed for service of an ordinary summons to appear.

- (a) If the goods or chattels, property or security were seized or attached while in the possession of the claimant, the case shall proceed as if the attaching creditor were the plaintiff and the claimant were the defendant. In all other cases, it shall proceed as if the claimant were the plaintiff and the execution or attaching creditor were the defendant.

33. The claimant shall, within five days after the day of service of the summons upon him, deliver to the bailiff, or leave at the office of the clerk of the Court, a particular of any goods or chattels, property or security, alleged to be the property of the claimant, and the grounds of his claim, set forth in ordinary and concise language; or, in case of a claim for rent, the amount thereof, for what period, in respect to what premises the same is claimed to be due, and the terms of holding; and any money paid into Court shall be retained by the clerk until the claim shall be adjudicated upon; provided that, by consent of all parties, or without such consent, if the Judge shall so direct, an interpleader claim may be tried, although these rules may not have been complied with.

34. In case the claimant shall not have complied with the rule in respect of delivering a particular of his claim, the Judge may, upon such terms as he may direct, allow him to deliver the same.

35. Where the claim to any goods or chattels, property or security, taken in execution or attached, or the proceeds or value thereof, shall be dismissed, the costs of the bailiff shall be allowed to him out of the amount levied, unless the Judge shall otherwise order.

- (a) Where, under sub-section 3 of section 269 of the Act, the claimant to goods taken under process, claims damages from the creditor or from the bailiff, for or in respect of the seizure of the property, he shall, in the particulars of his claim to the goods, state the amount he claims for damages and the grounds upon which he claims such damages.
- (b) Where a creditor claims damages against a bailiff arising out of the execution of any process, he shall, five clear days before the day upon which the interpleader is to be tried, deliver to the bailiff a notice of such claim, stating the grounds and amount of such claim.
- (c) Where a claim for damages, under sub-section 3 of section 269 of the Act, is made against a bailiff and creditor, or either of them, they, or either of them, may pay into Court money in full satisfaction of such claim for damages, and such payment into Court shall be made in the same manner and have the same effect, and the parties respectively shall have the same rights and remedies of defence and counter-claim as they would respectively have if the proceeding were an action in which the claimant was plaintiff and the bailiff and creditor defendants.
- (d) Interpleader summonses shall be issued by the clerk, on the application of the bailiff, and shall be served on the claimant and creditor, or upon any solicitor or agent who acts for the claimant or creditor.

- (e) Interpleader summonses shall be issued from the Court from which the process issued, or the Court holden for the division in which the seizure under the process was made, at the option of the bailiff, and the creditor, and claimant shall be summoned to such Court, but subject to the power of the Judge in his discretion to change the place of trial.
- (f) In every case in which an execution or attachment has been issued to a bailiff who has seized property as belonging to a judgment or absconding debtor, if the bailiff finds that there is an incumbrance or lien upon the property, or such a claim made there-to as is provided for in section 269 of the Act, it shall be the duty of the bailiff, forthwith, to notify the party who issued the process, of such incumbrance, lien or claim; and if the party issuing such process insists upon the bailiff maintaining such seizure, it shall be incumbent upon him to deposit, with the clerk, a sufficient sum of money to indemnify the clerk and the bailiff against their costs of an interpleader; and in the event of his neglecting or refusing to do so, the bailiff may, in his own discretion, abandon the seizure, and the party who issued the process shall be barred, unless the Judge shall otherwise order.
- (g) In case the claimant so desires he may deposit with the bailiff an amount equal to the value of the property seized or attached, or to the amount for which the seizure or attachment has been made, whichever shall be the lesser sum, to be by such bailiff paid into Court to abide the decision of the Judge upon such claim, and thereupon the bailiff shall re-deliver the property to the claimant. In case of disagreement as to the value of the property seized or attached the matter shall be decided by the clerk or the Judge.

36. It shall be lawful for the Judge, upon the application of any party to any action or matter pending in the

Court, to make any order for the sale, by the bailiff or by any person named in such order, and in such manner and on such terms as the Judge may think reasonable, of any goods, cattle, property, wares, or merchandise which may be of a perishable nature or which incur charges for food or keeping, or which for any other just and sufficient cause it may be proper to have sold at once.

37. The claimant of goods, chattels, cattle or property referred to in section 269 of the Act, must in making his claim, if he wishes to prevent a sale thereof, deposit with the bailiff either the amount of the value of the goods claimed—(such value to be fixed by appraisement, in case of dispute)—to be by such bailiff paid into Court to abide the final result of the proceedings upon such claim; or the sum which the bailiff shall be allowed to charge as costs for keeping possession of such goods, chattels, cattle or property until such decision can be obtained, and in default of the claimant so doing, the bailiff shall sell such goods as if no such claim had been made, and shall pay into Court the proceeds of such sale, to abide the final decision of the matter.

REPLEVIN.

38. The Division Courts have jurisdiction in all actions of replevin, in case the value of the goods or other property or effects distrained, taken or detained, does not exceed the sum of \$60, and in case the title to land is not brought in question.

WHEN GOODS REPLEVIABLE.

39. Wherever any goods, chattels, deeds, bonds, debentures, promissory notes, bills of exchange, books of account, papers, writings, valuable securities, or other personal property or effects have been wrongfully distrained, under circumstances in which by the law of England, on the fifth day of December, one thousand eight hundred and fifty-nine, replevin might have been made, the person complaining of such distress as unlawful may obtain a writ of replevin in the manner prescribed by these rules; or in case any such

goods, chattels, property or effects have been otherwise wrongfully taken or detained, the owner or other person, or corporation capable of maintaining an action of trespass or trover for personal property, may bring an action of replevin for the recovery thereof, and for the recovery of damages sustained by reason of such unlawful caption and detention, or of such unlawful detention, in like manner as actions are brought and maintained by persons complaining of unlawful distresses.

40. No party to an action or proceeding in any Division Court shall replevy, or take out of the custody of the bailiff, or other officer, any personal property seized by him under process against such party.

41. In actions of replevin, no other cause of action shall be joined in the summons.

42. The action may be brought in the Division Court for the division within which the defendant, or one of the defendants, resides or carries on business, or where the goods, or other property or effects have been distrained, taken or detained.

43. No writ of replevin shall issue out of any Division Court:

1. Unless an order is granted for the writ on an affidavit by the person claiming the property, or some other person, showing to the satisfaction of the Judge the facts of the wrongful taking or detention which is complained of, as well as the value and description of the property, and that the person claiming it is the owner thereof, or is lawfully entitled to the possession thereof (as the case may be).

2. Or unless the person claiming the property, his servant or agent, makes an affidavit, which shall be entitled and filed in the Court out of which the writ is to issue, stating:

(a) That the person claiming the property is the owner thereof, or that he is lawfully entitled to the possession thereof (describing the property in the affidavit);

- (b) The value thereof, to the best of his belief;
- (c) That the property was wrongfully taken out of the possession of the claimant, or was fraudulently got out of his possession, within two calendar months next before the making of the affidavit;
- (d) That the deponent is advised and believes that the claimant is entitled to an order for the writ;
- (e) And that there is good reason to apprehend that unless the writ is issued without waiting for an order, the delay would materially prejudice the just rights of the claimant in respect to the property.

3. Or (in case the property was distrained for rent or damage feasant), unless the person claiming the property, his servant or agent, makes an affidavit (which shall be entitled and filed in the Court from which the writ is to issue), stating:

- (a) That the person claiming the property is the owner thereof, or that he is lawfully entitled to the possession thereof (describing the property in the affidavit);
- (b) The value thereof, to the best of his belief;
- (c) That the property was taken under colour of a distress for rent or damage feasant, and in such case the writ shall state that the defendant has taken and unjustly detains the property, under colour of a distress for rent, or damage feasant (as the case may be).

44. Where an application for an order is made, the Judge may proceed on the *ex parte* application of the plaintiff, or may direct notice to be served on the defendant to show cause why the writ should not issue, and may on the *ex parte* application, or on the return of the motion to show cause, grant or refuse the writ, or direct the bailiff to take

a bond in less or more than treble the value of the property, or may direct him to take and detain the property until the further order of the Judge, instead of at once replevying the same to the plaintiff; or may impose any terms or conditions in granting the writ, or in refusing the same, as under the circumstances in evidence appears just.

45. In actions of replevin, the first process shall be a writ of replevin and summons, called "summons in replevin" (Form No. 41). The description and value of the property shall be stated in the writ.

46. On entering a claim in replevin, the plaintiff must specify and describe, in a statement of particulars, the cattle or the several goods, chattels or other property, or effects distrained, taken or detained, and the distress or other taking, or detention of which he complains.

47. Before the bailiff acts on the writ, he shall take a bond with sufficient sureties in treble the value of the property to be replevied, as stated in the writ. The bond shall be assignal to the defendant; and the bond and assignment thereof may be in the words or to the effect in the Forms Nos. 65 and 66, the condition being varied to correspond with the writ.

48. The bond shall be subject to the provisions of section 8, chapter 11, of the Act passed by the Imperial Parliament in the eighth and ninth years of the reign of His Majesty King William the Third.

49. Where a writ of replevin is sued out for any personal property which had not been previously taken out of the plaintiff's possession, and for which the plaintiff might have brought an action of trespass or trover, the defendant shall be entitled, if the plaintiff fails in the action, to be fully indemnified against all damages sustained by the defendant, including any extra costs which he may incur in defending the action, and the bond to be taken by the bailiff shall be conditioned not only as heretofore required in that behalf, but also to indemnify and save harmless the defendant from

all loss and damage which he may sustain by reason of the seizure, and of any deterioration of the property in the meantime, in the event of its being returned, and all costs, charges and expenses which the defendant may incur. This rule shall not apply to cases of distress for rent or damage feasant.

50. In case the writ issues without an order, the bailiff shall take and detain the property and shall not replevy the same to the plaintiff without the order of the Judge in that behalf, but may, within fourteen days from the time of his taking the same re-deliver it to the defendant, unless in the meantime the plaintiff obtains and serves on the bailiff an order directing a different disposition of the property; but this rule shall not apply in case of a distress for rent or damage feasant under Rule No. 43, sub-rule 3.

51. In case the property to be replevied, or any part thereof, is secured or concealed in any dwelling house or other building or enclosure of the defendant, or of any other person holding the same for him, and in case the bailiff publicly demands from the owner and occupant of the premises deliverance of the property to be replevied, and in case the same is not delivered to him within twenty-four hours after such demand, he may, and if necessary shall, break open such house, building or enclosure for the purpose of replevying such property or any part thereof, and shall make replevin according to the writ aforesaid.

52. If the property to be replevied, or any part thereof, is concealed either about the person or on the premises of the defendant, or of any other person holding the same for him, and in case the bailiff demands from the defendant or such other person deliverance thereof, and deliverance is neglected or refused, he may, and if necessary shall, search and examine the person and premises of the defendant, or of such other person, for the purpose of replevying such property or any part thereof, and shall make replevin according to the writ.

53. The bailiff shall return the writ at or before the return day thereof, and shall transmit annexed thereto:—

- (a) The names of the sureties in, and the date of the bond taken from the plaintiff, and the name or names of the witnesses thereto.
- (b) The place of residence and additions of the sureties.
- (c) The number, quantity and quality of the articles of property replevied; and in case he has replevied only a portion of the property mentioned in the writ, and cannot replevy the residue by reason of the same having been removed or carried, (*eloigned*) out of the county by the defendant, or not being in the possession of the defendant, or of any other person for him, he shall state in his return the articles which he cannot replevy, and the reason why not.

54. If the bailiff makes such a return of the property distrained, taken or detained having been *eloigned*, then upon the filing of such return, a writ in *withernam* shall be issued by the clerk who issued the summons in replevin; and before executing such writ the bailiff shall take security, as provided by Rule No. 47.

55. A copy of the writ shall be served on the defendant personally, or, if he cannot be found, by leaving the copy at his usual or last place of abode, with his wife, or some other grown person being a member of his household, or an inmate of the said place of abode.

56. The copy of the writ shall not be served upon the defendant until the bailiff has replevied the property, or some part of it, if he cannot replevy the whole, in consequence of the defendant having removed or carried (*eloigned*) the same out of the county in which he is bailiff, or because the same is not in the possession of the defendant, or of any other person for him.

57. In case it is shown by affidavit to the satisfaction of the Judge, that service of the writ cannot be made upon the defendant in any of the modes authorized by the preceding rules, such Judge may grant leave to the plaintiff to serve the writ and statement of particulars in such manner, at such place, or upon such person for the defendant, as to him may seem proper, and may grant leave to the plaintiff to proceed as if personal service had been effected, subject to such conditions as the Judge may impose.

58. In case a writ of replevin is issued, or in case an order is made therefor, the defendant may at any time, or from time to time, on notice to the plaintiff, apply to the Judge on affidavit or otherwise, to discharge, vary or modify the writ or order, or to stay proceedings under the writ, or for any other relief, to be specified in the notice, with respect to the return, safety or sale of the property or any part thereof, or otherwise; and the Judge may make such order thereon as, under all the circumstances, best consists with justice between the parties.

59. In case the defendant has been duly served with a copy of the writ and statement of particulars, then, unless the defendant has left with the clerk within eight days after the day of service (where the service is required to be ten days before the return), or within twelve days after the day of service (where the service is required to be fifteen days before the return), a notice in writing that he intends to dispute the claim of the plaintiff, it will be considered that he has no defence, and the plaintiff may proceed in the action in the same manner as if the defendant had appeared and had admitted the plaintiff's right to the possession of the goods, and final judgment may be entered as if by default. But the Judge may, on sufficient grounds shown, and on such terms as to costs and otherwise as he thinks just, let the defendant in to defend.

60. In case the plaintiff becomes entitled to sign judgment by default, he shall be at liberty to sign final judgment for the sum of two dollars and costs, according to the proper

scale, but shall not be entitled to recover a larger sum, except upon an assessment before a Judge or jury, or upon filing the written consent of the defendant or his solicitor, and an affidavit verifying the signature to such consent.

61. The defendant may at any time, not less than six days before the day appointed for the trial, pay into Court such sum as he thinks a full satisfaction for the plaintiff's demand, together with the plaintiff's costs up to the time of such payment.

62. In case the defendant in an action of replevin shall pay money and costs into Court, and shall leave with the clerk a consent in writing that the replevin bond be delivered up to be cancelled and an express waiver of all right to the property replevied, and the plaintiff accepts such money, the proceedings in the said action of replevin shall thenceforth cease and be discontinued.

63. It shall not be necessary to have formal pleadings in replevin actions.

64. Either party may require a jury in an action of replevin, where the value of the goods sought to be recovered exceeds \$20.

65. Where the distress is for rent, or for any other claim for which a distress may be lawfully taken, and the defendant succeeds in the action, if the defendant shall so require, the Judge shall, if the action has been tried without a jury, and the jury shall, if the action is tried with a jury, find the value of the goods distrained, and if the value be less than the amount of rent or otherwise of money in arrear, judgment shall be given for the amount of such value; but if the amount of the rent, or such other sum of money in arrear, be less than the value so found, judgment shall be given for the amount of such rent, or other sum of money, and may be enforced in the same manner as any other judgment of the Court.

66. Where the distress is for damage feasant and the defendant is entitled to judgment for a return, if the plaintiff shall so require, the Judge shall, if the action is tried without a jury, and the jury shall, if the action is tried with a jury, find the amount of the damage sustained by the defendant, and judgment shall then be given in favour of the defendant, in the alternative for a return, or for the amount of the damage so found.

67. In all cases of replevin, other than those arising out of a seizure by way of distress, where the defendant justifies the taking and proves his case, the judgment for the defendant shall be for a return of the goods, with or without costs, together with such damages as the defendant shall have sustained, if damages are awarded.

GARNISHEE PROCEEDINGS.

68. The application, under the 178th section of the Act, may be made to the Judge *ex parte*, and upon affidavit of the primary creditor, his solicitor, or some other person or persons aware of the facts, respectively, stating that judgment has been recovered, and when, and that it is still unsatisfied, in whole or in part, and to what amount, and that the deponent has reason to believe, and does believe, that some one or more parties (naming them, or stating that he is unable to name them), is or are within this Province, and is or are indebted to the primary debtor, and stating the nature of the debt sought to be attached, and the amount thereof, if known to the deponent, or that after careful enquiry he has been unable to ascertain the amount thereof.

69. Any person, other than the primary creditor, primary debtor or the garnishee who wishes to avail himself of the benefit of the first sub-section of section 188 of the Act, may apply to the Judge for directions how to proceed. Upon such application, the Judge may, upon such terms as he shall think just, add any one or more persons as a party or parties to the action, either as a primary creditor or interverner, or otherwise as he may determine, and may

dispose of all matters in dispute, and make such order or orders as to costs as he might have done if such person or persons had originally been parties to the action.

70. In an action against a primary debtor and a garnishee, in case the primary creditor fails to prove his claim, or is nonsuited, or judgment is rendered against him, in favour of the primary debtor, and there is a controversy between the primary debtor and the garnishee, which they both desire to have disposed of, the case shall proceed to its termination as between them in the same way as if the primary debtor were the plaintiff in an ordinary action, and the garnishee were the defendant, and all the consequences shall follow thereafter, whatever be the state of the cause, as would ordinarily follow, and the same remedies and judgment shall be afforded and rendered in all respects as between them as there would supposing the primary creditor had not been a party to the proceedings.

71. Where an exemption from liability to garnishment is claimed, under the 174th and 175th sections of the Act, it shall be necessary for the primary debtor to establish the fact of such exemption.

72. The warning (Form 73a) shall be endorsed on or subjoined to the attaching order issued under section 178 and on the summons referred to in section 181 and section 185, sub-section 1.

73. In case a debt sought to be garnished is for wages or salary, the memorandum required by section 177, showing the residence of the primary debtor and the nature of his occupation in the service of the garnishee, if he is then in such service, and whether the debt alleged or adjudged to be due was or was not incurred for board or lodging, shall be set forth in the statement of the plaintiff's claim, and copies thereof furnished to the clerk, and endorsed upon or annexed to the summons, as required by the said section 177.

74. The service of the summons on the garnishee shall in all cases be made at least ten days before the return there-

of, and the service on the primary debtor or debtors, ten or fifteen days (according to the places of residence of the parties to be served), before the return thereof. If the amount of the primary creditor's claim exceeds fifteen dollars, the service shall be personal, unless the Judge order otherwise; if such claim does not exceed fifteen dollars, the service may be personal, or on his wife or servant or some grown person being an inmate of the dwelling house or usual place of abode, trading or dealing of the person requiring to be served.

75. The primary debtor shall in all cases, unless service is dispensed with by the Judge, be served with the garnishee summons, and if not served, the Judge, unless he dispenses with service, may, on such terms as to him may seem meet, adjourn the case until such service be effected.

76. The Judge, in any garnishee proceeding, may order that the service need not be personal, but may be made on any person or persons to be named in the order, or in such other manner as the Judge may direct.

77. Whenever in a proceeding to obtain an attachment of debts, it is claimed that the debt sought to be attached belongs to some third person, or that any third person has a lien or charge upon it, the Judge may order such third person to appear and to state the nature and particulars of his claim upon such debt, and after hearing the allegations of such third person, and of any other person who by the same or any subsequent order, is ordered to appear, or in case of such third person not appearing when ordered, the Judge may give such decision between all the parties as he shall consider just, and may bar the claim of such third person, either in whole or in part, or make such other order, as such Judge shall think fit, upon such terms in all cases, with respect to the lien or charge (if any) of such third person, and to costs, as the Judge shall think just and reasonable.

78. Where the summons under section 181 is to be issued from any Court other than that in which the primary creditor has obtained judgment against the primary debtor,

a transcript of such judgment shall be filed with the clerk of such first mentioned Court, previous to the issuing of the summons against the garnishee.

79. No payment made by a garnishee to a primary creditor before judgment given against the primary debtor, shall discharge him from his liability, unless an order for such payment has been first obtained from the Judge.

(a) Where a garnishee pays money into Court, and the primary creditor does not accept in satisfaction of the amount sought to be attached, the sum so paid into Court, the money shall not be paid out until after the judgment, and any costs which shall have been awarded to the garnishee shall be deducted therefrom and paid to the garnishee.

80. Where the garnishee shall pay into Court, five clear days before the day appointed for the trial, the amount due from him to the judgment debtor, or an amount equal to the claim of the primary creditor, including costs, he shall not be personally liable for any costs incurred by the primary creditor.

(a) The clerk shall forthwith give notice of the payment into Court to the primary creditor, and if he elects to accept the money so paid into Court by the garnishee, and shall send to the clerk and to the garnishee by post, or leave with the clerk a written notice stating such acceptance, within forty-eight hours after receipt of the notice of payment into Court, no further proceedings against the garnishee shall be taken in the said suit, and in the event of judgment being given therein in favour of the primary creditor against the primary debtor, the money so paid into Court shall, by order of the Judge, be applied upon such judgment. In case the primary creditor had already obtained judgment against the primary debtor, the said money shall, by order of the Judge, be applied upon the same.

- (b) Upon the return day, should the amount paid into Court be not accepted, the Judge shall determine as to the liability of the garnishee to pay any further sum on account of the debt claimed to be due from him to the primary debtor, and as to the party by whom the costs of the action, or any part thereof, shall be paid, and make such order as may be in accordance with such determination.
- (c) If the primary creditor shall not send or deliver notice to the clerk of his acceptance of the money paid into Court, as hereinbefore provided, it shall be considered that he elects not to accept the same, but to proceed for a further sum, and the action shall proceed accordingly.

81. The application under section 195 shall not be made *ex parte*, but must be made upon written notice of motion, or by summons obtained from the Judge, returnable at any time and place the Judge may appoint, and calling upon the garnishee, primary creditor, or such other person or persons as the Judge in his discretion shall think fit. If the money has been paid over, the primary creditor or other person may be called upon by the notice of motion or summons, to show cause why he should not pay the money to the primary debtor or other person applying.

82. The bond to be given under section 196 shall be executed by the primary creditor, or his agent, with one or more sufficient sureties, and shall be in double the amount of the debt ordered to be paid by the garnishee, and shall be an ordinary bond to the clerk, by his name of office, conditioned for the repayment of the money in case repayment be ordered, and such bond shall be approved of by the clerk.

83. The bond given to the clerk under section 196, may, by order of the Judge, be assigned by the clerk to a garnishee, upon its being shown that the condition has been broken, by non-compliance with an order for the repayment into Court of moneys paid in by a garnishee.

84. If the primary creditor is obliged to issue execution against the garnishee, the costs of such execution and the bailiff's fees thereon shall be levied of the garnishee.

85. When the attaching order or garnishee summons issues, the clerk shall forthwith make an entry thereof in the debt attachment book, and so from time to time shall make an entry of each subsequent proceeding so soon as taken.

DEFENCES IN GARNISHEE PROCEEDINGS.

86. In cases under the Act, and whether the claim of the primary creditor is or is not a judgment, the primary debtor, the garnishee and all other parties in any way interested in, or to be affected by the proceedings, shall be entitled to set up any defence, as between the primary creditor and the primary debtor, which the latter would be entitled to set up in an ordinary action, and also any such defence as between the garnishee and the primary debtor, and may also show any other just cause why the debt sought to be garnished should not be paid over or applied in or towards the satisfaction of the claim of the primary creditor.

- (a) A primary debtor or garnishee who desires to set up a statutory or other defence, or set-off, or to admit his liability, in whole or in part, for the amount claimed in such action, shall file with the clerk the particulars of such defence or set-off, or an admission of the amount due or owing by the primary debtor, or the garnishee, as the case may be, within eight days after service on him of the summons.
- (b) The clerk shall forthwith send by mail to each of the said parties to the action a copy of such defence, set-off, or admission.
- (c) The primary creditor may file with the clerk a notice that he admits the defence, or set-off, or accepts the admission of liability as correct.

- (d) A copy of the notice shall be sent by the clerk, by mail, forthwith to the garnishee.
- (e) In the absence of any notice of defence, or set-off, from any primary debtor or garnishee, the Judge may, in his discretion, give judgment against such primary debtor or garnishee, subject to the provisions of sub-section (a) of this rule.
- (f) In the event of the primary creditor failing to file a notice admitting or rejecting such defence, set-off or admission of liability, the garnishee shall not be bound to attend at the trial, and the sum admitted to be due or owing by the garnishee shall be taken to be the correct amount of his liability, unless the Judge shall otherwise order, in which latter case the garnishee shall be notified by the clerk, and shall have an opportunity of attending at a subsequent date, and of being heard before judgment is given against him.
- (g) The costs of all notices required to be given under section 188 of the Act shall be costs in the cause, and in no case shall be payable by the garnishee, unless specially ordered by the Judge.
- (h) If the garnishee or the primary debtor, having been duly served with summons, does not appear on the return of such summons, the Judge may proceed to hear the case and may give judgment against him in his absence, but, except where an admission of liability has been filed as in the preceding part of this rule is provided, no judgment shall be given against any garnishee or primary debtor, either for want of notice of defence, or for default of appearance, without sufficient proof of the debt or amount due or owing by him as required by section 187 of the Act.

(See *In re Johnson v. Therien*, 12 P. R. 442.)

- (i) If only some of the parties required to be served are served, the Judge may give the same judgment against those served as in ordinary cases.

87. In the proceedings against garnishees under the Consolidated Rules of Practice of the Supreme Court of Judicature for Ontario, Rules 940 to 943, inclusive, the forms 173b and 152 may be used; and the same proceedings may be taken in the Division Court against the garnishee as provided in the Division Courts Act and in these rules and forms, so far as applicable.

88. In cases of attachment issued in garnishee proceedings, under the Consolidated Rules of Practice of the Supreme Court of Judicature and coming within the jurisdiction of the Division Courts; the clerk of the Division Court shall enter all the proceedings (commencing with the order received by him) in the procedure book.

PROCEEDINGS BY AND AGAINST EXECUTORS AND ADMINISTRATORS.

89. A party suing an executor or administrator may charge in the summons (Form 50), that the defendant has had assets, and has wasted them, and he shall state in his particulars the amount of assets alleged to have been left by the deceased, and the manner in which the said assets have been wasted.

90. In all cases where the defendant is charged with waste in the summons, if the Judge shall be of opinion that the defendant has wasted the assets, the judgment shall be, that the debt, or damages and costs, shall be levied of the goods of the testator (if any), and if not, of the goods of the defendant to an amount not exceeding the amount so wasted; and the non-payment of the amount of the demand immediately, on the Court finding such demand to be correct, and that the defendant is chargeable in respect of assets, shall be conclusive evidence of wasting to the amount with which he is so chargeable.

91. Where an executor or administrator denies his representative character, or alleges a release to himself of the demand, whether he insists on any other ground of defence or not, and the judgment of the Court is in favour of the plaintiff, it shall be, that the amount found to be due, and costs shall be levied of the goods of the testator, if any, and if not, as to costs, of the goods of the defendant.

92. Where an executor or administrator admits his representative character, and only denies the demand, if the plaintiff prove it, the judgment shall be, that the demand and costs shall be levied of the goods of the testator, if any, and if not, as to costs, of the goods of the defendant, unless the Judge otherwise orders.

93. Where the defendant admits his representative character, but denies the demand, and alleges a total or partial administration of assets, and the plaintiff proves his demand, and the defendant proves the administration alleged, the judgment shall be, to levy the costs of proving the demand of the goods of the testator, if any, and if not, of the goods of the defendant, unless the Judge otherwise orders; and as to the whole or residue of the demand, judgment of assets when they shall have come into his hands; and the plaintiff shall pay the defendant's costs of proving the administration of assets.

94. Where the defendant admits his representative character, but denies the demand, and alleges a total or partial administration of assets, and the plaintiff proves his demand, but the defendant does not prove the administration alleged, the judgment shall be, to levy the amount of the demand, if such amount of assets is shown to have come to the hands of the defendant, or such amount as is shown to have come to them and costs, of the goods of the testator, if any, and if not, as to costs, of the goods of the defendant; and as to the residue of the demand, if any, judgment of assets when they shall have come into his hands.

95. Where the defendant admits his representative character and the plaintiff's demand, but alleges a total or

partial administration of the assets, and proves the administration alleged, the judgment shall, in case of total administration, be for assets when they shall have come into his hands, and in case of partial administration, for such amount as is shown to be in his hands, of the goods of the testator, and as to the residue of the demand for such goods when they shall have come into his hands, and the plaintiff shall pay the defendant's costs of proving the administration of assets, unless the Judge shall otherwise order.

96. Where a defendant admits his representative character and the plaintiff's demand, but alleges a total or partial administration of the assets, but does not prove the administration alleged, and has not established any other ground of defence, the judgment shall be, to levy the amount of the demand, if so much assets is shown to have come to the defendant's hands, or so much as is shown to have come to them, and costs, of the goods of the testator, if any, and if not, as to costs, of the goods of the defendant; and as to the residue of the demand, if any, judgment of assets when they shall have come into his hands.

97. Where judgment has been given against an executor or administrator, that the amount be levied upon assets of the deceased, when they shall have come into his hands, the plaintiff or his personal representative may issue a summons (Form No. 53), and if it shall appear that assets have come to the hands of the executor or administrator since the judgment, the Judge may order that the debt, damages and costs be levied of the goods of the testator, if any, and if not, as to the costs, of the goods of the defendant, provided that it shall be competent for the party applying to charge in the summons that the executor or administrator has wasted the assets of the testator or intestate, in the same manner as in Rule 89, and the provisions of Rule 90 shall apply to such inquiry; and the Judge may, if it appears that the party charged has wasted the assets, direct a levy to be made, as to the debt and costs of the goods of the testator, if any, and if not, of the goods of the defendant.

98. Where a defendant admits his representative character and the plaintiff's demand, and that he is chargeable with any sum in respect of assets, he shall pay such sum into Court, subject to the rules relating to payment into Court in other cases.

99. In actions against executors and administrators, for which provision is not hereinbefore specially made, if the defendant fails as to any of his defences, the judgment shall be for the plaintiff, as to his costs of disproving such defence, and such costs shall be levied of the goods of the testator, if any, and if not, of the goods of the defendant, unless the Judge otherwise orders.

(a) In case an executor or administrator pleads his notice to creditors and distribution of assets, he must give notice of such defence, and that there has been a proper audit of the accounts of his administration.

100. In actions by executors or administrators, if the plaintiff fail, the costs shall, unless the Judge shall otherwise order, be awarded in favour of the defendant, and shall be levied of such goods as the Judge shall direct.

(a) If the plaintiff sues, or the defendant or any of the defendants is sued, in a representative capacity, it shall be stated in the particulars of claim in what capacity the plaintiff sues or the defendant is sued.

(b) Trustees, executors or administrators may sue and be sued on behalf of, or as representing the property or estate of which they are trustees or representatives, without joining any of the persons beneficially interested in the trust or estate, and shall be considered as representing such persons; but the Judge may, at any stage of the proceedings, order any of such persons to be made parties to the action, either in addition to, or in lieu of, the previously existing parties thereto.

- (c) Claims by or against an executor or administrator, as such, may be joined with claims by or against him personally, provided the last mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor or administrator.

DEFENCES AND CONFESSIONS.

101. In any case where no dispute is entered as to a portion of a claim sued in a Division Court, or where a portion of the claim is admitted by the defendant, the plaintiff may, at his option, proceed to judgment and execution for such portion without prejudice to his right to recover for the remainder of the claim.

- (a) Where the defendant's notice of defence disputes the claim in part only, or admits a portion of the claim, the clerk shall forthwith notify the plaintiff thereof in the manner provided by Rule 162, and require him forthwith to state in writing whether he is willing to take judgment for the portion so admitted, or as to which no dispute is made, and unless the plaintiff, within 48 hours after the receipt of such notice, notifies the clerk in writing that he is content to take judgment for such portion, it will be assumed that he intends to proceed for the remainder of the claim, and the case will be entered for trial accordingly. (See *post*, Rule 166.)

CONFESSION BEFORE ACTION.

102. Every confession or acknowledgment of debt, taken before suit commenced, must show therein, or by statement thereto attached at the time of the taking thereof, the particulars of the claim for which it is given, with the same fulness and certainty as would be required in proceedings by "special summons"; and unless application for judgment on such confession be made for the Judge within three calendar months next after the same is taken, or at the sittings of the

Court next after the expiration of such period, no execution shall be issued on the judgment to be rendered, without an affidavit by the plaintiff or his agent that the sum confessed, or some and what part thereof remains justly due; and applications for judgment shall be made at a sitting of the Court for the division wherein the confession was taken, or to the Judge elsewhere.

NOTICE OF ADMISSION OF PART.

103. With a view to save unnecessary expense in proof, the defendant or plaintiff shall be at liberty to give the opposite party a notice (Form 19) in writing, that he will admit, on the trial of the cause, any part of the claim, counter-claim, or set-off, or any facts which would otherwise require proof; and after such notice given, the plaintiff or defendant shall not be allowed any expense subsequently incurred for the purpose of such proof; the notice shall be served on the plaintiff or defendant, or left at his usual place of abode, or, if he be not resident within the division, be left with the clerk of the Court for him, at least five days before the day appointed for the trial or hearing.

104. A defendant giving notice of set-off or other statutory defence, or paying money into Court, or pleading a tender or counter-claim, shall be deemed to have sufficiently given the clerk notice of disputing the plaintiff's claim within the meaning of the 109th section of the Act.

COUNTER-CLAIM.

105. A defendant in an action may set up by way of counter-claim, against the claim of the plaintiff, any right or claim whether the same sound in damages or not.

106. A counter-claim, not involving matter beyond the jurisdiction of the Court, shall have the same effect as a statement of claim in a cross-action, so as to enable the Court to pronounce a final judgment in the same action, both on the original and on the cross-claim.

107. Where a defendant sets up a counter-claim, if the plaintiff or any other person named as party to such counter-claim contends that the claim thereby raised ought not to be disposed of by way of counter-claim, but in an independent action, he may at any time before, or at the sittings, apply to the Judge for an order that such counter-claim may be excluded; and the Judge may, on the hearing of such application, make such order as shall be just.

108. In any case of counter-claim, or where any incidental claim arises at the trial, if the Judge thinks that such claim can be better disposed of by an independent action, he may order such claim to be excluded, whether any application for that purpose be made to him or not.

109. Where, in any action, a set-off or counter-claim is established against the plaintiff's claim, the Judge may, if the balance is in favour of the defendant, give judgment for the defendant for such balance, or may otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case, as provided by sections 74 and 130 of the Act.

110. Where in any action a counter-claim is made, it shall be a matter of discretion for the Judge whether the judgment shall be entered for so much for the plaintiff on the claim and for so much for the defendant on the counter-claim, or whether it shall be entered for the balance.

111. If, in any case in which the defendant sets up a counter-claim or set-off, the action of the plaintiff is stayed, discontinued or dismissed, the counter-claim or set-off may, nevertheless, be proceeded with.

112. Where an action is brought, or a defendant in his statement of defence seeks by way of counter-claim to recover specific property, and the party from whom such recovery is sought does not dispute the title of the party seeking to recover the same, but claims to retain the property by virtue of a lien or otherwise as security for any sum of money, the Judge, upon being satisfied by affidavit or

otherwise of the existence of such lien or security, may order that the party seeking to recover the property be at liberty to pay into Court, to abide the event of the action, the amount of money in respect of which the lien or security is claimed, and such further sum (if any) for interest and costs as such Judge may direct, and that upon such payment into Court being made, the property be given up to the party seeking to recover it.

JUDGMENT ON COUNTER-CLAIM, WHERE PLAINTIFF DOES NOT APPEAR.

113. If, when a trial is called on, the plaintiff does not appear, and the defendant has given notice of a counter-claim, not involving matter beyond the jurisdiction of the Court, he may prove such counter-claim, so far as the burden of proof lies upon him, and have judgment accordingly; provided that any judgment obtained under this rule may be set aside, upon the application of the plaintiff, in like manner as a judgment obtained under sections 109 or 117 of the Act.

RULE IN CASES OF DEFENCE OR COUNTER-CLAIM IN EXCESS OF JURISDICTION.

114. Where, in any proceeding before a Division Court, any defence or counter-claim of the defendant involves matter beyond the jurisdiction of the Court, such defence or counter-claim shall not affect the competence or the duty of the Court to dispose of the whole matter in controversy, so far as relates to the demand of the plaintiff and the defence thereto, but no relief exceeding that which the Court has jurisdiction to administer shall be given to the defendant upon any such counter-claim.

115. In case the defendant desires to avail himself of the law of set-off, or counter-claim, or of the Statute of Limitations, or of any defence under any other statute having the force of law in this Province, he shall, not less than six days before the day appointed for the trial, give notice thereof in writing to the plaintiff, or leave the same for him at his usual place of abode, if living within the division, or if living

without the division, shall deliver the same to the clerk of the Court in which the action is to be tried; and in case of set-off or counter-claim, he shall deliver to the clerk a copy of the particulars of such set-off, or counter-claim, to be kept with the papers in the cause, and also a copy for the plaintiff, if his usual place of abode is not within the division; and the clerk shall forthwith give to such plaintiff a notice of such set-off, or counter-claim, by mailing the same to him in a letter duly registered, addressed to his usual place of abode or business, according to the Form 195, together with one of the copies of the particulars of such set-off or counter-claim; provided that in case of non-compliance with this rule, the Judge may, on such terms as he shall think fit, adjourn the trial of the action to enable the defendant to give such notice, or may in his discretion allow such notice to be given and the trial of the action to proceed at once.

JUDGMENTS AND EXECUTIONS.

SPECIAL SUMMONS—SEVERAL DEFENDANTS.

116 In case there are several defendants, and all of them have not been served with a special summons, then unless the plaintiff is content to take judgment against those served only, judgment cannot be entered by the clerk on his behalf, but the plaintiff will have to proceed to a hearing before the Judge as in ordinary cases.

117. In case the notice required by the 109th section of the Act has not been given by a sole defendant, or by one or more of several defendants (and the plaintiff is willing to take judgment against those only), and leave to dispute the plaintiff's claim has not been given by the Judge, the clerk, after receiving a return of the "special summons," with the proper affidavit of service, may, on the twelfth day after the service of the summons, where the return day is the eleventh day after service, and on the seventeenth day, where the sixteenth day after the day of service is the return day of such summons, or at any time within one month after such return day, enter judgment against the defendant or

defendants so served as aforesaid, for the claim, or so much thereof as has not been disputed, without prejudice to the plaintiff's right to recover for the remainder of the claim.

118. In actions commenced by special summons, where there are more defendants than one, and some of them have been served with process, but have not given notice disputing the plaintiff's claim, and other or others of them have not been served, but have given a confession of the debt, the clerk shall produce or transmit the confession duly proved to the Judge for his order, and when the Judge's order shall be procured, the clerk may enter judgment within one month after the return of the summons against all the defendants for the amount claimed in the particulars, provided that the defendants who have confessed shall have acknowledged the same amount by their confession, and such judgment may be in the Form No. 81, and it shall not be in the power of the plaintiff to elect either to proceed on the confession against some of the defendants, or to obtain final judgment against those defendants who have not confessed, but the judgment shall be entered against all the defendants jointly.

119. In any action brought by special summons against several defendants, if all the defendants have not been served upon the same day, and no notice of defence has been entered by the defendant or defendants first served, the clerk may immediately after the expiration of the return day, in the case of each defendant, enter a minute in the procedure book, stating the facts of service and of no defence; and if no defence has been entered by any of said defendants, the clerk may, immediately after the time has expired in which the defendant last served might have entered such defence, sign final judgment against all the defendants.

120. Where there are several defendants in an action commenced by special summons, under section 109 of the Act, and one or more of defendants has or have given notice disputing the claim of the plaintiff, and another or others

of them have not given such notice, the plaintiff may have final judgment entered by the clerk against the latter, and may cause execution to be issued upon such judgment, without prejudice to his right to proceed with his action against such of the defendants as have given the notice.

121. Any defendant who has been minuted as aforesaid, may be let in to defend by the Judge on sufficient grounds shown.

122. In case the defendant has given a confession or acknowledgment of debt, and has not put in the notice disputing the plaintiff's claim, the plaintiff may either proceed on the confession, as in ordinary cases, or may obtain final judgment under the 109th section of the Act, as he may elect.

123. In case judgment be not entered by default, on a special summons, within one month after the return day thereof, the clerk shall not enter it afterwards, without an order from the Judge.

(a) When judgment is given against a defendant by the Judge, pursuant to section 110, immediate notice thereof shall be given, by the clerk by letter or postal card, to the defendant.

124. Where, under the provisions of the Act, a writ of execution is required to be executed out of the division, but within the county, the writ may be directed by name of office to the bailiff of any of the Division Courts in the county, but shall not be issued to the bailiff in another county. The returns required to be made under sections 103 and 104 must be made to the clerk by whom the process or document has been issued.

JUDGMENTS.

125. Every judgment and order of the Court shall be entered by the clerk in the procedure book, according to the forms 77 to 131 inclusive, or to the like effect; and when

any order is made for the payment of any debt, damages, costs, or other sum of money, the same shall be payable at the office of the clerk, at the expiration of fifteen days from the rendering of judgment, unless the Judge otherwise orders, but where judgment is signed by the clerk under sections 109 or 111 of the Act, execution may issue forthwith.

126. After an award has been made, and with an affidavit of the due execution thereof is filed under the Act, unless the Judge otherwise orders, the clerk shall forthwith enter judgment on such award, and shall, at the request of the party entitled thereto, issue execution thereon, at such time and in such manner as upon an ordinary judgment of the Court.

127. When judgment is given for the defendant on a set-off or counter-claim, he will be entitled to issue execution and to take proceedings as in ordinary cases for the recovery of the balance of his set-off or counter-claim, if such balance does not exceed a sum within the jurisdiction of the Court, or if the defendant files with the clerk a consent in writing to abandon such excess.

128. Where, under section 147 of the Act, the Judge suspends or stays any judgment, order or execution, given, made, or issued in the action, and orders the same to be paid by instalments, such instalments shall be payable at such periods as the order directs; and if no period be mentioned, the first shall become due on the 28th day from the day of making the order, and every successive instalment shall become due at a like period of 28 days from the day of the previous instalments becoming due, and such instalments shall be paid to the clerk of the Court.

JUDGMENT WHERE DEFENCE ONLY FOR PART.

129. Where a motion has been made for judgment, under section 111, and it appears that the defence set up by the defendant applies only to a part of the plaintiff's claim, which is admitted to be due, the clerk shall, by the order of

the Judge, at the request of the plaintiff, forthwith enter final judgment for such part thereof as the defence does not apply to, or as is admitted to be due.

MOTION FOR JUDGMENT.

130. Where the amount of the claim of debt sought to be recovered in an action exceeds \$40, and the Judge has made an order empowering the clerk to sign final judgment, under section 111 of the Act, execution may be issued thereon, at the instance of the plaintiff, at any time thereafter.

(a) The application of a plaintiff shall be by notice by the plaintiff, his solicitor or agent, to be served upon the defendant, and no costs in respect of such application shall be taxed in the cause, except for service when made by the bailiff.

131. Where final judgment has been signed by the clerk under section 109, execution may issue forthwith.

132. All executions and warrants shall be printed on half sheets of foolscap paper in order to afford space for the endorsement of a schedule of property seized and other memoranda proper for the bailiff to enter thereon.

THE CREDITORS' RELIEF ACT.

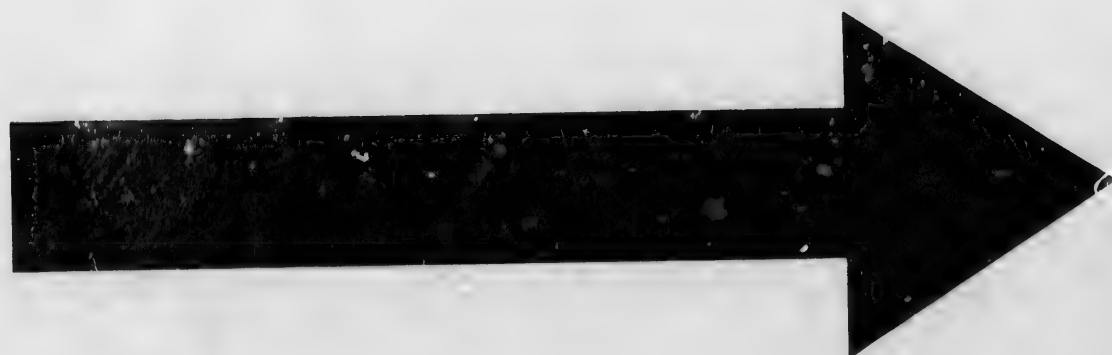
133. Where any Division Court judgment or execution has been, or shall hereafter be filed with any sheriff under the Creditors' Relief Act, or a certificate for any claim within the jurisdiction of the Division Court, and the same is not paid in full, and the sheriff is unable to make the money thereon, the creditor may obtain a return thereof from the sheriff according to the facts and file the same with the clerk of the Division Court in which the judgment was recovered, or in the place where the cause of action arose, or the debtor (or one of the debtors, if more than one) resided, and the clerk of the Division Court shall enter the same in the procedure book of the Court, and it shall thereupon become a judgment of the said Court for the unpaid balance

due thereon, as appearing by the sheriff's return, and the claim may be enforced in the same manner as any other judgment of the Division Court.

(a) Where a claim is not paid in full, and the sheriff's return under the Creditors' Relief Act relates to a judgment or execution of the Division Court, and is filed with the clerk of the Court in which the judgment was recovered, or from which the execution issued—the clerk shall make an entry in the procedure book at the place where the judgment has been so entered, and the effect of the sheriff's return shall therein be set forth (Form 95), and if the sheriff's return shows a part satisfaction of the judgment or execution, the same shall be so stated, and the judgment against the judgment debtor shall stand only thereafter for the residue of the debt or damages, interest and costs.

(c) Where the sheriff's return relates to a certificate for a claim within the jurisdiction of the Division Court that has not been paid in full, and such certificate is filed with the clerk of the Division Court in the division where the cause of action arose, or wherein the debtor (or one of the debtors, if more than one) resided—the clerk of such Court shall enter the same in the procedure book, as a judgment of such Court (Form 96), for the unpaid balance due thereon, as appears by such return, and shall take proceedings thereon, as upon any other judgment of such Court.

134. After a transcript of judgment has been issued from the home Court to a foreign Court or to a County Court, the clerk of the home Court has no further right to deal with the case, as his functions have ceased therein (except by order of the Judge or under the provisions of 52 V. c. 12, s. 24), and he cannot, either as agent for the judgment creditor, or otherwise, order, in the name of such judgment



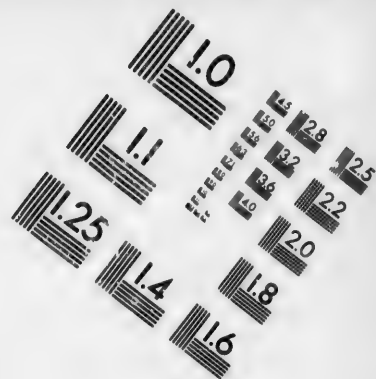
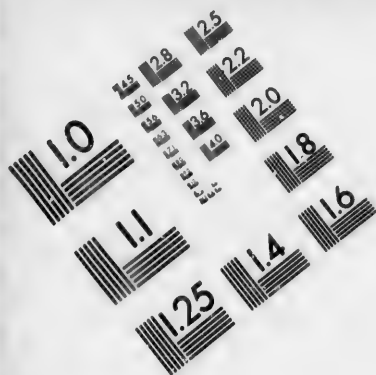
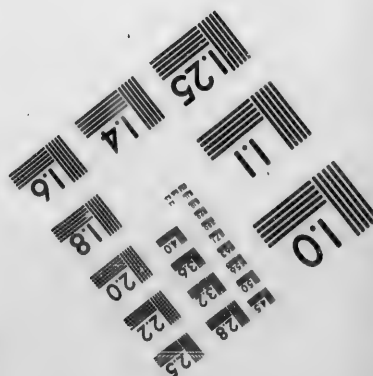
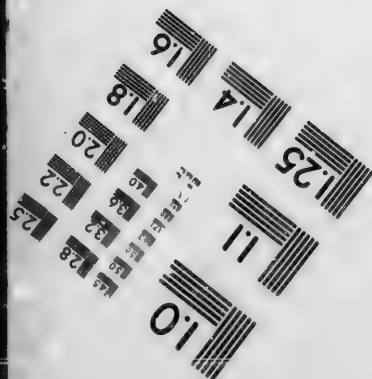
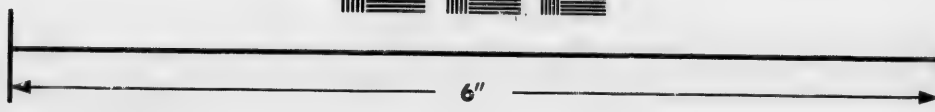
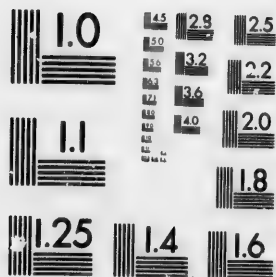


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creditor, or of any one else that the money made or paid thereon shall be transmitted to himself or to any other person.

(a) When, upon the application of any plaintiff or defendant having an unsatisfied judgment in his favor, a transcript of the entry of such judgment, under section 217, or a transcript of the judgment under section 223 of the Act is issued from the Court in which the judgment has been recovered, an entry thereof shall be made by the clerk in the procedure book, and no further proceedings shall be had in the said Court upon any such judgment, without an order from the Judge, except as provided by section 217 of the Act, as amended by section 24 of 52 V. c. 12; in the case of a judgment of which a transcript has been issued to another Division Court.

(b) Every transcript of a judgment shall be prepared by the clerk upon a full sheet of foolscap paper, carefully written in a plain hand, or printed without contraction of words or figures, and shall be according to the Forms 164, 164a, 164b, and if a judgment has been revived, the order of revival or its purport shall be set forth therein.

135. No transcript or copy of a judgment shall be issued or acted upon, under the 215th or 217th sections of the Act, where the proceedings have abated, or in a case where no warrant of execution or judgment summons shall have issued on a judgment more than six years old, unless such judgment shall have been revived.

136. In cases that have been brought to trial the clerk shall not issue any transcript of a judgment until after the lapse of fourteen days from the trial, except upon the order of the Judge.

137. The entries of proceedings on a transcript under the 217th section of the Act may be made in the procedure

book of the Court to which it has been sent, in the form of an ordinary suit, as near as may be. And the procedure book shall, for that purpose, be the transcript of judgment book required by the Act.

138. All special judgments or orders shall be prepared by the clerk, or such other person as the Judge shall direct. Either party dissatisfied with the judgment or order as so prepared may apply to the Judge by motion to vary and finally settle the same; but, except by leave of the Judge, such notice shall not operate as a stay of proceedings. The judgment or order, when finally settled, shall be filed, and a minute of such filing, with the date thereof, shall be entered in the procedure book.

REVIVING JUDGMENTS, ETC.

139. During the lives of the parties of a judgment, or of any of them, execution or other process may be issued at any time within six years from the recovery of the judgment.

140. In the following cases:

- (a) Where any change has taken place after judgment by death or otherwise, of the parties entitled or liable to execution.
- (b) Where a husband is entitled, or liable to execution upon a judgment or order, for or against his wife.
- (c) Where a party is entitled to execution upon a judgment of assets in future.
- (d) Where a party is entitled to execution against any of the shareholders of a joint stock company upon a judgment recovered against such company, or against a public officer or other persons representing such company.

The party alleging himself to be entitled to execution must apply on affidavit to the Judge for leave to issue execution

accordingly. And such Judge may, if satisfied that the party so applying is entitled to issue execution, make an order to that effect, or may order that any issue or question necessary to determine the rights of the parties, shall be tried in any of the ways in which any question in any action may be tried; and in either case such Judge may impose such terms as to costs or otherwise as shall be just. No order to issue execution shall be made under this rule *ex parte*, but only after at least three days' notice to the party against whom it is sought to issue execution, unless under special circumstances the Judge shall otherwise order.

141. No execution or other process shall, without leave of the Judge, issue on a judgment more than six years old, unless some payment has been made thereon within twelve months previously; but no notice to the debtor, before applying for such leave, shall be necessary, and such leave shall be expressed on the execution or warrant, or summons in the words, "Issued by leave of the Judge."

142. The renewal of all writs of execution may be made from time to time, before the expiration thereof, by the clerk of the Court issuing the same, by marking on the margin of the writ a memorandum to the following effect:—"Renewed for six months from the date thereof."

Dated day of 18 . X. Y., Clerk.

143. Where one or more of several plaintiffs or defendants shall die after judgment, proceedings to enforce the same may be taken by the survivors or survivor, or against the survivors or survivor, without leave of the Judge.

CROSS JUDGMENTS TO BE SET OFF.

144. In case there are cross-judgments between the parties to an action, the Judge, on the application of either party, may by order direct the clerk to make an entry thereof in the procedure book, and that the party only who obtained judgment for the larger sum shall have execution, and the clerk shall (if required) issue execution thereon in

the ordinary form for the balance over the smaller judgment; and he shall enter satisfaction on the judgment for the smaller sum. If both sums are equal, satisfaction shall be ordered to be entered upon both judgments. (See Forms 223 to 226, inclusive).

CLERKS' AND BAILIFFS' DUTIES.

145. The clerk of every Division Court shall have an office at such place, within the division for which he is clerk, as the Judge shall direct.

146. The following books shall be kept by the clerk, and the necessary entries fairly made therein, namely: 1st, a book to be called the "Procedure Book," in which shall be entered a note of all process issued, and of all orders, judgments, transcripts received, warrants, executions and returns thereto, and of all other proceedings, in every cause, and at every Court; 2nd, a book to be called the "Cash Book," in which shall be entered from day to day an account of all suitors' moneys paid into and out of Court; 3rd, a "Debt Attachment Book;" 4th, a "Clerk's Fee Book," for the purposes set forth in section 68 of the Act; 5th, the "Judgment Debtors' Book," provided for by Rule No. 201; and 6th, the "Order Book," required by sub-rule (a) to this rule, which books shall be according to the Forms Nos. 4, 5, 6, 7, 8 and 9, and shall be kept, as nearly as may be, in the manner shown therein, respectively.

(a) The said order book shall be a book in which all orders for the issuing of process or alias, or subsequent summonses, and executions and other documents requiring duties to be performed by the clerk, from day to day, shall be entered and dated as they occur, and signed by the party requiring the same, or his solicitor or agent.

147. After the books which shall be in use, when these rules come into effect, shall have been filled up, the clerks of the respective Courts shall keep procedure books in the Form No. 4 following and make entries therein according to these rules.

[This rule has been superseded by the amendment embodied in section 46, adopting a more simple form of procedure book, as in Schedule B.]

- (e) Every bailiff shall keep a separate book, "Fee Book," in which he shall enter from day to day all fees, charges and emoluments received by him by virtue of his office, as required by section 68 of the Act, and which shall be according to the Form No. 12.
- (f) On the 15th day of January in every year, he shall make up to and including the 31st day of December of the previous year, a return to the inspector, under oath, shewing the aggregate amount of fees, charges and emoluments so received by him by virtue of his office, and which he has become entitled to receive and has not received during the year.
- (g) In the return made by the clerk shall be shewn the actual amount of the disbursements during the same year in connection with his office.
- (h) Every clerk of a Division Court for a division embracing a city, or part of a city, shall keep a separate book, in which he shall enter from day to day all fees, charges and emoluments received by him by virtue of his office, shewing the sums received by him for fees, charges, and emoluments of all kinds whatsoever; and shall, on the 15th day of January in each year, make up to and including the 31st day of December in the previous year, a return to the Lieutenant-Governor, under oath, of such fees, charges and emoluments so received by him during the said year.
- (i) Every clerk shall, on or before the 15th day of January in each year, make a return of the business of his office, for the year ending the 31st day of December preceding, in such manner as the Lieutenant-Governor shall direct.

148. The clerk shall number every claim in the order in which it is received by him; the numbering to show the standing of the suit, in respect to the whole number of suits entered in the Court for the then current year.

149. In any case where the proceeding by special summons is warranted, it shall be adopted by the clerk, unless otherwise ordered by the plaintiff.

(a) Where a plaintiff orders an ordinary summons to be issued for a claim for which a special summons would be warranted, and no notice of defence is entered, and the case comes to Court, no more costs shall be allowed the plaintiff than would be taxed upon a judgment by default on special summons.

150. The clerk shall annex to every summons the copy of claim entered with him, according to section 95 of the Act; and to each copy of summons to be served shall be likewise annexed a copy of such claim; and it shall be deemed a part of the summons.

151. The clerk shall enter in the procedure book the full amount of moneys returned by the bailiff with an execution, and shall show therein the amount which he has taxed and paid the bailiff as his fees for executing the same.

152. All the papers in the cause received or filed by the clerk shall be kept by him together in the original summons, and be produced by the clerk at the hearing of the cause, or when required on application to the Judge. The original summons, in all cases, shall be printed on a half-sheet of foolscap, in order that the papers may be kept therein.

153. Every clerk, upon being furnished with the necessary postage or post card, is expected and enjoined to answer promptly all reasonable inquiries made touching suits by the parties thereto, their solicitors or agents.

THE TRIAL LIST.

SERVICE OF SUBPENA IN FOREIGN DIVISION.

154. The clerk of any Division Court shall, when required, forward all summonses to the clerk of any other Division Court in the same or any other county for service, and the clerk of such other Division Court who shall receive any summons sent to him by the clerk of another Division Court shall hand the same to the bailiff for service, and when returned shall receive the same from the bailiff, and prepare the necessary affidavit of service, and upon payment of his fees and the fees for such service, shall return it to the clerk from whom he received it, with the necessary affidavit verifying the service and mileage.

- (a) Every clerk receiving such summons for service shall enter all such proceedings in a book, to be called the foreign summons book (Form No. 10), to be kept by him for the purpose of recording the same.
- (b) No clerk or bailiff is authorized to receive money from a defendant or primary debtor, or garnishee upon a claim or suit where the summons is merely forwarded for service, or served under this rule, either as agent for the party, or as clerk or bailiff of the Court, or otherwise. This rule shall not be held to apply in the case of a clerk or bailiff who is postmaster receiving and transmitting money by means of postal money order, under regulations of the post office department.

155. The clerk shall, for each sitting of the Court, prepare three lists, viz.: A Jury list, in which he shall enter all cases to be tried by a jury; a Judge's list, in which he shall enter all cases to be tried by the Judge alone, and a Judgment Debtors' list, in which he shall enter all cases in which the judgment debtor has been summoned for examination under section 235.

- (a) In the jury list, and Judge's list respectively, all causes in which the sum sought to be recovered does not exceed \$100 shall be entered first; and subsequently all causes in which the sum exceeds \$100, and subject to this provision, causes shall be entered in the jury list and Judge's list, respectively, in the order in which they were in the first instance entered with the clerk; and in the judgment debtors' list, they shall be entered in the order in which the summonses for examination were issued.
- (b) All interpleader issues, in which the money claimed, or the value of the goods or chattels claimed, or of the proceeds thereof exceeds \$100, or where the damages claimed by either party against the other or against the bailiff exceed the sum of \$60, shall be entered among the causes in which the sum sought to be recovered exceeds \$100.
- (c) Nothing in this rule provided shall interfere with the discretion of the Judge to dispose of the causes at any such sitting of the Court in the order that may seem most convenient to him.
- (d) The list shall be divided into and ruled with the following six headings, viz.:—
- 1st. The number on the list (to be stated consecutively).
 - 2nd. The year, number of the summons.
 - 3rd. The style of the cause.
 - 4th. The nature of the subject of the action, whether on contract or for tort, or in replevin, or an interpleader, or a judgment summons, etc.
 - 5th. The amount claimed (if any).
 - 6th. The judgment, or order, or disposition made of the case by the Judge.

TRIAL BY JURY.

156. In case any party has required a jury to be summoned to attend any sitting of the Court, the clerk shall issue a summons and also twelve copies thereof for service on the jurors, and shall deliver them to the bailiff for service. Upon the return of the original summons by the bailiff, the clerk shall prepare an affidavit of service and of the mileage necessarily incurred to effect such service, which affidavit shall be sworn by the bailiff.

PROCEEDINGS IN TRANSFERRED CASES.

157. The clerk, upon receiving the papers and proceedings in any action transferred to the Court of his division under section 87 of the Act, shall at once enter the proceedings in his procedure book, and number the action in the regular order as if it were a new action commenced on the day he received said papers and proceedings, and shall place the action on the list for trial, and take all further proceedings in the action, in the manner directed by section 87.

158. After receiving the papers he shall forthwith notify the parties or their agents by mailing them registered notices informing them of the date, hour and place of the sittings at which such case is to be tried.

159. The clerk of the Court who issued the summons shall certify to the Court to which the case is transferred, in detail, all the costs incurred in the suit up to the date of transfer, inclusive.

160. When final judgment is entered by the clerk, the clerk is to file the summons and particulars of claim, with the affidavit of the due service of both.

POSTPONED JUDGMENT.

161. In case the Judge shall at the trial postpone pronouncing his decision, and shall either omit to name a subsequent day and hour for the delivery thereof in writing at

the clerk's office, as provided by section 144, or, having named such day and hour, shall omit to give his decision thereat, and shall not have duly extended the time for giving the same, his decision may subsequently be given by him at any regular sittings of the Court, or in writing at the clerk's office, upon a day and hour to be fixed by the Judge; provided that written notice of his intention to do so shall have been sent to the parties, or their solicitors or agents by registered letter, at least ten days prior to said sittings, or to the day so fixed by the Judge, either by the Judge or by the clerk of the Court; such letters to be addressed to them at the addresses given by them in pursuance of Rule No. 241, if such addresses have been given; and if not, then at their last known places of abode.

162. In case the defendant shall have given the clerk notice that he disputes the plaintiff's claim, or any other notice of which the plaintiff should be informed before the trial, or if the defendant has given a confession, or failed to give notice of defence when required, the clerk shall immediately send the plaintiff notice thereof.

163. The clerk of every Division Court shall, immediately after the receipt of any sum of money for any party to an action, forward through the post office, to the party entitled to receive the same, a notice, enclosed in an envelope, addressed to such party, or in case of a transcript of judgment from another Court, then to the clerk who issued the same, at his proper post office address, informing him of the receipt of the money. The notice thus sent shall be prepaid and registered, and the clerk shall obtain and file among the papers in the action the post office certificate of the registration, and shall be at liberty to deduct the postage and charge for registration from the moneys in his hands, but he shall charge no fee for the notice. The absence from among the papers in the action of the certificate of registration shall be *prima facie* evidence against the clerk that the notice has not been forwarded.

164. The clerk and bailiff of the Court shall not upon any pretence whatever withhold any moneys received for suitors, on the ground that any clerk or bailiff may be indebted to the officer holding such money either for fees or costs or otherwise; but all such moneys, when received or collected, shall at once be duly paid over to the order of the party entitled to the same without reference to such accounts.

165. Where money is received by the clerk on a suit entered by a solicitor or agent who has paid the deposit, or is responsible for costs to the clerk, such money shall not without notice to the solicitor or agent be paid out to the person beneficially interested therein, unless upon the order of the Judge.

NOTICE TO DEFENDANT OF PLAINTIFF, PROCEEDING FOR
REMAINDER OF CLAIM.

166. In case the plaintiff has signified in writing his intention to proceed for the remainder of the demand claimed, the clerk shall notify the defendant, by post, or by sending notice to his usual place of abode or business, and the notice shall state when and where the case is to be tried.

NOTICE, ON LEAVE GRANTED TO DEFEND.

167. When the Judge has, by order, granted leave to a defendant to dispute the plaintiff's claim, and the defendant has left with the clerk the requisite notice, as provided by section 112 of the Act, the clerk shall send to the plaintiff, his solicitor or agent, notice of such order, specifying at what sittings of the Court the case will be tried.

168. In any case in which the defendant, primary debtor, or garnishee, or a third party claimant in a garnishee proceeding, or any other person intervening or claiming any interest in the suit, has given the clerk notice that he disputes the claim of the plaintiff or primary creditor, or any other notice of which the plaintiff or primary or attaching creditor should be informed before the trial, or in any case

in which it has become the duty of the clerk to give notice to any party to a cause of any defence, admission, Judge's order or other matter, of which he should be notified before the trial, such notice must show the place and time of the sittings of the Court, at which the cause is to be heard.

169. When any notice required to be given to any of the parties to a suit is sent through the post office, the clerk shall register the letter containing such notice, and shall obtain and preserve with the other papers in the suit a certificate of such registration.

TENDER.

170. When a defendant pays money into Court, in part payment of the amount claimed (section 125), or in order that he may rely on the defence of tender (section 122), and the plaintiff does not accept in satisfaction of the action the sum so paid into Court, the money shall not be paid out until after the judgment, and any costs which shall have been awarded to the defendant shall be deducted therefrom and paid to the defendant.

TENDER OR PAYMENT OF MONEY INTO COURT.

171. In case a defendant pays into Court a sum of money in full satisfaction of plaintiff's demand, together with costs, under section 125 of the Act, or pleads a tender before action brought and pays money into Court, under section 122 of the Act, the clerk shall give to the plaintiff or his agent notice thereof forthwith by post (on receiving the necessary postage), or shall send the same to his usual place of abode or business.

APPLICATION FOR NEW TRIAL.

172. In the event of an application for a new trial, in a case in which the sum sought to be recovered exceeds \$100, if the evidence has been taken down in writing, the clerk shall forward the same with such application and for the purposes thereof.

173. Upon application for a new trial, when either party appeals and leaves papers requiring service upon the opposite party with the clerk or at his office, under section 150, the clerk shall forthwith mail, by registered letter, all such papers to the person or party entitled to the same, or his solicitor or agent, upon payment of the postage and his fees for transmitting.

TAXATION OF COSTS.

174. In every case the clerk shall make out a bill of costs in detail, and the same may be endorsed upon or annexed to the original summons and may be in the form shown.

- (a) Where practicable, the costs of an action or matter shall be taxed by the clerk on the day on which the action or matter is tried or heard, and every taxation shall be subject to revision by the Judge or acting Judge.

175. On payment of a fee of 10 cents every clerk, when required by parties paying costs, shall give a statement in writing of items of all costs, including bailiffs' fees in detail, and, upon being furnished with the necessary postage or post card, transmit the same by post.

RETURNS.

176. The clerk shall, on the 15th day of January in every year, make, up to and including the 31st day of December of the previous year, a return to the inspector, under oath (on forms to be furnished to him), showing the aggregate amount of fees, charges and emoluments received by him, and which he has become entitled to receive and has not received, during the year.

177. He shall transmit to the Treasurer of the Province, on the 15th day of January in every year, a duplicate of the said return, and shall also pay to such treasurer, for the use of the Province, such proportion of the fees and emoluments earned by him during the preceding year as under the Division Courts Act (section 59) he is not entitled to retain to his own use.

178. The list of unclaimed moneys, required by the 49th section of the Act, shall be made under oath, according to the Form No. 221, and shall, in the month of January in each year, be transmitted by the clerk, together with the moneys (if any) therein mentioned, to the county crown attorney, and if no money remains unclaimed, the fact shall be stated in the affidavit.

179. At the opening of every Court, and at such other times as the Judge shall require, the clerk shall lay before the Judge the returns of bailiffs, under Rule 193, duly certified under Rule 194. (See Form 239.)

180. The clerk shall, at every sitting of the Court, report in writing to the Judge as to the several sureties of himself and the bailiff or bailiffs of his Court, showing whether any of them have died, become insolvent or left the country since his last report, and mentioning any facts connected therewith which ought to be made known to the Judge.

181. Every Division Court clerk shall make a return to the inspector of Division Courts, on or before the 15th day of January in every year, showing the number of judgment debtors who, during the twelve months ending the 31st day of December previously, were ordered to be committed, and also of those who were actually committed, under each of the five heads mentioned in section 240 of the Act.

TRANSFER OF CASES TO THE HIGH COURT.

182. Where an order of transfer is made, under the Judicature Act or the Division Courts Act, the clerk of the Court in which the proceedings were instituted, or the suit is pending, shall annex together all the proceedings and papers filed with him and transmit the same, together with the order of transference or a copy thereof, to such officer of the High Court as the order directs.

BAILIFF'S DUTIES.

183. Every bailiff receiving summons for service from a clerk, shall promptly serve the same, and shall immediately

after service has been effected, make a return to such clerk, showing the mode of service, and unless such return be duly made within six days after such service, the bailiff shall not be entitled to the fee for return and attendance and making affidavit; and where a summons has not been served, the bailiff shall, immediately after the time for service has expired, return the same to the clerk, stating the reason for non-service, in writing, on the back of the summons.

184. The bailiff shall attend every sittings of the Court at the place appointed for holding the same, at such time as shall be required by the Judge, and shall see that all suitable preparations are made for the proper accommodation of the Court. He shall make all necessary proclamations, preserve order, call the parties and witnesses, and perform such other duties thereat as may be imposed by the Judge.

185. The bailiff shall keep a book (see Form No. 11), to be called "The Bailiff's Process Book," and he shall enter therein every warrant or execution which shall have been delivered to him to execute, and shall enter from time to time therein what he shall have done under or with such warrant or execution; and if the same be not executed according to the exigency thereof, why it was not so executed; and he shall, at all reasonable times, give to every party interested every information he may require as to the execution or non-execution of any such warrant or execution; and the book so required to be kept shall at all reasonable times be open to the inspection of the Judge or clerk.

- (a) Bailiffs must return an execution within thirty days prescribed by the Act (section 220) unless it has been renewed at the instance of the execution creditor before the expiration of the thirty days, or, unless the seizure under the execution has been so recent that he has been unable to advertise and sell the property within the thirty days; in which latter case he must make a report to the clerk of the condition of matters and of

the facts of the case, so as to enable the clerk to report them to the execution creditor.

- (b) In case the bailiff has offered the property for sale (after duly advertising it), without being able to either effect a sale or to realize a reasonable amount therefor, he must not sacrifice the property, but must offer it for sale again, if within the thirty days, and if after the thirty days and the execution has not been renewed, the execution must be returned property on hand for want of buyers.
- (c) If an execution is returned by the bailiff property on hand for want of buyers, after the thirty days, the clerk cannot renew the execution, but must issue another process—directing the bailiff to sell the property on hand for what it will bring.
- (d) The whole of the money for debt (or damages), costs, interest, bailiff's fees and percentage (but not disbursements) must be paid over by the bailiff to the clerk from whom he received the execution; and after the bailiff's fees and charges are duly taxed, the clerk must pay the bailiff's proper taxable fees on executions, duly returned according to law, and none others.

186. Every bailiff receiving any money by virtue of his office, shall, immediately after the receipt thereof, pay over the same to the proper clerk, and neglecting or failing to do so, shall be subjected to the loss of his office.

187. The bailiff or other officer executing any warrant of commitment shall, at the time of delivering the party arrested to the gaoler, deliver to such gaoler the warrant of commitment, and shall endorse thereon the amount of his fees and mileage, and a statement of the actual day of the arrest.

188. The bailiff receiving an execution shall immediately endorse on the same a correct statement of the day

and hour of the day when he receives such execution, and in addition to the formal return (Forms 235 to 237 inclusive) on every execution returned, he shall give a correct and full statement of the particulars, in detail, of all his charges made for fees and disbursements in the execution thereof; and a similar statement in making returns of writs of replevin and warrants of attachment.

189. Every bailiff shall keep a cash book (Form No. 13) in which shall be entered all payments received by him of moneys on executions or otherwise, from the defendants or garnishees or others.

190. In case a "summons" is not served in time to make the notice of the sittings of the Court, at the foot of "warning No. 2," available for the information of the defendant, the bailiff shall return the same forthwith to the clerk who issued the summons, and the clerk shall add a new notice of the proper days of the week and month on which the two or more ensuing sittings of the Court are to be held, and shall forthwith return or transmit the same to the bailiff for service, and the proceeding herein directed may be repeated from time to time until due service is effected.

191. In case such summons has been sent to a foreign Court the bailiff shall return it to the clerk of that Court for transmission to the clerk of the home Court, who shall add the new notice above provided for.

192. Every summons must be served ten or fifteen days (according to the residence of the defendant) before the holding of the Court at which it is returnable (neither the day of service nor the day of holding the Court to be counted).

193. At every sittings and at such other times as the Judge shall require, the bailiff shall deliver to the clerk of the Court a statement or return on oath (Form 239), of every warrant and writ of execution in his hands, and of what shall have been done since his last return, under every warrant and writ of execution which he shall have been required to execute.

194. The return mentioned in the last rule shall be filed by the clerk in his office, and be open, without fee, to the inspection of any person interested; and the clerk shall examine such return, and if found correct and complete, within ten days after the receipt thereof, shall endorse thereon a memorandum in the following words: "I have carefully examined the within return, the same is full, true and correct in every particular, to the best of my knowledge and belief. Dated the day of 18 , clerk." And if such return be found by the clerk to be incorrect or incomplete, he shall forthwith give notice thereof to the Judge, and if no return be made he shall notify the Judge.

195. In case the proceedings in any suit shall be hindered or delayed by the neglect or misconduct of the clerk or bailiff of a foreign Court or of the home Court, the clerk or bailiff causing the same shall forfeit all fees in such suit, and shall, in addition thereto, pay any loss or damage that may result from such hindrance or delay to the party suffering therefrom.

196. No clerk or bailiff shall, directly or indirectly, purchase or be concerned in the purchase, or have any personal interest in a suit or judgment or claim in suit, in the Court of which he shall be an officer, and any clerk or bailiff transgressing this rule shall be subjected to the loss of his office.

197. No clerk or bailiff shall, either by himself or his partner in business, be engaged either directly or indirectly as agent for any party, during the conduct of the cause in Court,—and any clerk or bailiff transgressing this rule shall be subjected to the loss of his office.

198. In case a defendant determines to settle an action or pay the demand of a plaintiff, or pays money into Court under section 125, such settlement of the amount or payment of money into Court must be made with or to the clerk of the Division Court in which the suit was entered, or the proceedings thereof are being carried on.

199. No bailiff of any Court shall have the right or be allowed to take or receive any money from any defendant or party in any cause, either in settlement or on account of any debt sued or claimed, or of the costs thereon, except in cases in which he has an execution in his hands against the defendant or party, or a warrant of commitment, and no clerk shall have the right or be allowed to take or receive any money from any defendant or party in any cause, either in settlement or on account of any debt or costs, unless a suit has been commenced in his own Court for the recovery thereof, or the claim is actually in his hands for suit, or a transcript of judgment against the defendant or party has been sent to him from some other Court.

JUDGMENT SUMMONS.

200. A party having an unsatisfied judgment, who desires to proceed under the 235th and subsequent sections of the Act, shall file with the clerk an affidavit (Form No. 33), or to the like effect, and thereupon a summons (Form No. 54), bearing the proper new number in its order, shall be issued; if the proceeding be taken in a Division Court other than that in which the judgment was entered, there shall be delivered to the clerk a transcript of such judgment.

201. In order that a party who after examination has been discharged by the Judge may not be again summoned for examination at the suit of the same or any other creditor, without notice of such examination, every clerk shall keep a book in which entries may be made in the form of an index, to be called the "Judgment Debtors' Book" (Form 8) in which shall be entered the date when each judgment debtor was examined and discharged by the Judge, together with the number and style of the cause in which he was summoned and examined.

202. In case a judgment debtor who resides more than three miles from the place of the sitting of the Court, is summoned under section 235 of the Act, and does not attend, such non-attendance shall not be considered wilful, unless

he shall have been paid or tendered, when summoned, a sum equal to seventy-five cents for his day's attendance, and ten cents for each mile from his place of residence to the place of such sitting of the Court. Such payment to be costs in the cause unless otherwise ordered by the Judge.

WARRANTS OF COMMITMENT.

203. Warrants of commitment shall bear date on the day on which the order for commitment is made, and shall have endorsed thereon the amount of debt and costs on such proceedings, or of fine and costs up to the time of its delivery to the bailiff for execution, and shall continue in force for six calendar months from such date and no longer, unless renewed by an *ex parte* order of the Judge upon affidavit showing the cause of the non-execution, and that the moneys payable thereunder have not been satisfied. (Forms 162 and 162a.)

204. Upon application (which may be made *ex parte*) founded upon affidavit, showing to the satisfaction of the Judge the cause of the non-execution of such warrant and that the moneys payable thereunder have not been satisfied, such Judge may, during the continuance of the warrant of commitment, order that the same may be renewed for a further period. Such renewal shall not be for a period exceeding six calendar months, and may, in the discretion of the Judge, be for a less period.

205. The renewal of a warrant shall be made by the clerk and shall be marked on the margin of the warrant, or by endorsing thereon—"Renewed by Judge's order for calendar months from the day of
A.D. 18 .

X. Y.,
Clerk."

PAYMENT ON ARREST.

206. When a warrant of commitment is issued, the defendant may, at any time before his body is delivered into

the custody of the gaoler, pay to the bailiff the amount endorsed on the warrant, as that on the payment of which he may be discharged, and the bailiff shall forthwith give a receipt therefor. On receiving such amount, or at the request of the judgment creditor, in writing, the bailiff shall discharge the defendant, and shall, within twenty-four hours after receiving such amount, pay over the same to the clerk of the Court who issued the warrant.

AMENDMENTS AND CHANGE OF PARTIES.

207. Where an action has been commenced in the name of the wrong person as plaintiff, or where it is doubtful whether it has been commenced in the name of the right plaintiff or plaintiffs, the Court or a Judge, if satisfied that it has been so commenced, through a *bona fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, may order any other person or persons to be substituted or added as plaintiff or plaintiffs, upon such terms as may seem just, but no person shall be added or substituted as a plaintiff without his own consent.

208. In case it is found that a wrong party, as defendant, primary debtor or garnishee, has been sued or served with a summons, and it is desired to add a party under section 108, the Judge may grant an order therefor after action commenced *ex parte*, provided those persons who have been already made parties have not been served with the summons. If the application be made after service of the summons, the order adding other parties, as defendants, primary debtors or garnishees, must only be granted upon notice to those parties who have been already served with the summons.

209. In case an amendment is directed or allowed to be made at the trial, it shall not be necessary to draw up or issue an order therefor; the amendment may be at once made, or a minute of the amendment to be made may be entered in the procedure book. (C. J. R. 446.)

210. Where several persons are made defendants, and all of them have not been served, the name or names of the defendant or defendants, who have not been served, may, at the instance of either party, be struck out by order of the Judge, on such terms as he shall think fit; and the cause shall then proceed against the party served as to set off, counter-claim and other matters, as if all the defendants had been served.

211. Any application to add or strike out, or substitute a plaintiff or defendant may be made to the Judge at any time before trial, by motion or notice, or at the trial of the action in a summary manner.

212. In any case wherein it appears to the Judge that a party, defendant, has been improperly added, merely for the purpose of giving the Court jurisdiction, or colorable jurisdiction, over a cause of action, to the prejudice or inconvenience of another defendant or otherwise, the Judge may, in his discretion, strike out the name of such party and disallow all costs that may have been incurred by making him a defendant, and allow to him such costs as he has been put to by reason of having been made such defendant; and thereby leave the remaining parties to their rights, whatever they may be, as to jurisdiction or otherwise.

213. When a person, other than the defendant, appears at the hearing, and admits that he is the person whom the plaintiff intended to charge, his name may be substituted for that of the defendant, if the plaintiff consents, and thereupon the cause shall proceed, as if such person had been originally named in the summons; and, if necessary, the hearing may be adjourned on such terms as the Judge may think fit; and the costs of the person originally named as defendant shall be in the discretion of the Judge.

214. Where a party sues, or is sued in a representative character, but at the hearing it appears that he ought to have sued or been sued in his own right, the Judge may, at the instance of either party, and on such terms as he shall

think fit, amend the proceedings accordingly, and the case shall then proceed in all respects, as to set-off, counter-claim and other matters, as if the proper description of the party had been given in the summons.

215. Where a party sues, or is sued in his own right, but at the hearing it appears that he ought to have sued or been sued in a representative character, the Judge may, at the instance of either party and on such terms as he shall think fit, amend the proceedings accordingly, and the case shall then proceed in all respects, as to set-off, counter-claim and other matters, as if the proper description of the party had been given in the summons.

216. No action or matter shall be defeated by reason of the misjoinder or non-joinder of parties, and the Judge may in every action or matter deal with the matter in controversy so far as regards the rights and interests of the parties actually before him. The Judge may at any stage of the proceedings, either upon or without the application of either party, and in such terms as may be just, order that the names of any parties improperly joined, whether as plaintiffs or as defendants, be struck out, and that the names of any parties be added, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the Judge may be necessary in order to enable him effectually and completely to adjudicate upon and settle all the questions involved in the action or matter. No person shall be added as a plaintiff suing without a next friend, or as the next friend of a plaintiff under any disability, without his own consent in writing thereto. Every person whose name is so added as defendant shall be served with a copy of the order so adding him, and the proceedings as against such party shall be deemed to have begun only on the service of such order.

217. Where it appears at a trial that a less number of persons have been made plaintiffs than by law required, the name of the omitted person may, at the instance of either party, be added, by order of the Judge, on such terms as he

shall think fit, and thereupon the action shall proceed in all respects as if the proper persons had been originally made parties; and if such person shall, either at the trial or at some adjournment thereof, personally or by writing, signed by him or his solicitor, consent to become a plaintiff in manner aforesaid, the Judge shall then pronounce judgment as if such person had originally been made a plaintiff, but if such person shall not consent to become a plaintiff in manner aforesaid, either at the trial or at the adjournment thereof, the action or matter shall be struck out.

218. Where the name or description of a plaintiff in the summons is insufficient or incorrect, it may be amended at the instance of either party by order of the Judge, on such terms as he shall think fit, and thereupon the action shall proceed in all respects as if the name or description had been originally such as it appears after the amendment has been made.

219. Where the name or description of the defendant in the summons is insufficient or incorrect, it may be amended at the instance of either party by order of the Judge, on such terms as he shall think fit, and thereupon the action shall proceed in all respects as if the name or description had been originally such as it appears after the amendment has been made; but if no objection is taken to the name or description, the action may proceed, and in the judgment and all subsequent proceedings founded thereon, the defendant may be named and described in the same manner.

220. In actions or matters by or against a husband, or a wife or a husband be improperly joined or omitted, or if one of them be improperly substituted for the other, the summons may at the trial be amended at the instance of either party by order of the Judge, on such terms as he shall think fit, and thereupon the action shall proceed, in all respects as if the proper person had been made a party to the action.

221. Where a defendant is added or substituted, except where a defendant is substituted under Rule 213, an

order shall be drawn up, and together with a copy of the summons and particulars of claim, and a notice setting forth the day and place upon and at which he is to attend at the Court, shall be served upon him, according to the practice in the case of service of ordinary summons.

WHERE A PERSON BROUGHT IN DOES NOT APPEAR AT THE TRIAL.

222. If a person not originally a party to the action, who has been served with a copy of an order adding him as a party, does not appear at the trial, the Judge may proceed with the trial notwithstanding, and give such judgment or make such order as may be just against the person so served and not appearing, or may adjourn the trial, and give such directions and make such order as to costs as he shall think fit.

223. An action or matter shall not become abated by reason of the marriage, death or insolvency of any of the parties, if the cause of action survive or continue, and shall not become defective by the assignment, creation or devolution of any estate or title *pendente lite*, and whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the verdict or finding of the issues of fact and the judgment, but judgment may in such case be entered notwithstanding the death.

CHANGE OF PARTIES BEFORE JUDGMENT.

224. Where, by reason of any event occurring after the commencement of any action or matter, there shall be any assignment, creation, change, transmission or devolution of the interest, estate or title of any plaintiff in any action or matter before judgment, the person to, or upon whom such interest, estate or title has come or devolved, may give notice thereof to the clerk, with his name and address, together with an affidavit of the truth of the fact stated in such notice.

- (a) And thereupon such clerk shall cause a copy of such notice to be given to the defendant in the action or matter, in which shall be embodied a notice that unless upon a day to be named therein he appears and shows cause against the same, the person to or upon whom such interest, estate or title has come or devolved, will be substituted for, or made a joint plaintiff with, the plaintiff named in the original summons.

SUBSTITUTION OF A DEFENDANT.

225. Where by reason of any event occurring after the commencement of any action or matter, there shall be any assignment, creation, change, transmission or devolution of the liability, interest, estate or title of any defendant, in any action or matter, before judgment, the plaintiff, or the defendant or the person to or upon whom such liability, interest, estate or title has come or devolved, may, in like manner, give notice to the clerk, who shall take proceedings thereon, similar to those prescribed by the last preceding rule, and a defendant may be substituted or added, as the case may be, in manner similar to that provided in such rule for the substitution or addition of a plaintiff.

CHANGE OF PARTIES OR NEW CAPACITY.

226. Where, by reason of any event occurring after the commencement of any action or matter, and causing a change or transmission of interest or liability, or by reason of any person interested coming into existence after the commencement of the action or matter, it becomes necessary or desirable that any person, not already a party, should be made a party, or that any person, already a party, should be made a party in another capacity, an order that the proceedings shall be carried on between the continuing parties and such new party may be obtained before or at the trial, on application to the Judge, upon an allegation of such change or transmission of interest or liability, or of such person interested having come into existence.

NOTICE OF ORDER THEREFOR.

227. An order obtained as in the last preceding rule mentioned shall, unless the Judge shall otherwise direct, be served upon the continuing parties, or their solicitors, and also upon each such new party, unless the person making the application be himself the only new party, and the order shall from the time of such service, subject nevertheless to the next two following rules, be binding on the persons served therewith, and every person served therewith, who is not already a party to the action or matter, shall be bound to appear at the trial, and in the same manner as if he had been served with a summons.

228. Where any person being under no disability, or under no disability other than coverture, or being under any disability other than coverture, but having a guardian *ad litem* in the action or matter, shall be served with such order as mentioned in Rule 226, such person may, at or before the trial, apply to the Judge to discharge or vary such order.

229. Where any person being under any disability other than coverture, and not having a guardian *ad litem* in the action or matter, is served with any order as mentioned in Rule 226, such person may, before or at the trial, apply to the Judge to discharge or vary such order.

230. When the plaintiff or defendant in an action or matter dies, and the cause of action survives, but the person entitled to proceed fails to appear on the return day, the trial may be adjourned or judgment may be entered for the defendant, or (as the case may be) for the person against whom the action or matter might have been continued; and in such case if the plaintiff has died execution may issue, as provided by Rule 140.

231. Where a plaintiff or defendant is substituted, or added, or there is a change of parties under these rules, the procedure book shall show the same by proper entries thereof, and if necessary the cause thereafter may be entered in a

new place in the procedure book, retaining the original year, number of cause, and all subsequent proceedings are to be carried on under the altered title with the same year number.

GENERAL RULES.

232. Claims by or against husband and wife may be joined with claims by or against either of them separately.

233. The Court has no jurisdiction to try an action upon a note of hand, whether brought by the payee or any other person, the consideration, or any part of the consideration of which was any gambling debt, or for spirituous or malt liquors, or other like liquors, drunk in a tavern or ale-house. The term "note of hand" in the Act and in this rule shall be held to include promissory notes, bills of exchange, cheques, orders for the payment of money, due bills, I. O. U.'s, and all evidences of debt under the hand of the debtor.

INFANTS.

234. A minor may sue in a Division Court for any sum not exceeding \$100, due to him for wages, in the same manner as if he were of full age.

235. Where a minor applies to enter a suit for any cause of action other than for wages, or is a claimant in an interpleader proceeding, he shall procure the attendance of a next friend at the office of the clerk, at the time of entering the same, who shall sign an undertaking (Form 194) to be responsible for costs; and the cause shall proceed in the name of the infant by such next friend, but no order shall be necessary for the appointment of such next friend. If the plaintiff or claimant fail in, or withdraw, or discontinue his suit, and do not pay the amount of costs awarded against him, proceedings may be taken for the recovery of such amount from the next friend, as for the recovery of any judgment debt.

FORMAL OBJECTIONS.

236. No proceeding shall be defeated by any formal objection.

237. Non-compliance with any of these rules shall not render any proceeding in any action or matter void, unless the Judge so directs, but such proceeding may be set aside, either wholly or in part, as irregular, or amended, or otherwise dealt with in such manner and upon such terms as the Court or Judge thinks fit.

238. No application to set aside process or proceedings for irregularity shall be allowed, unless made within a reasonable time, nor if the party applying has taken a fresh step, after knowledge of the irregularity.

239. The Judge may at any time, and on such terms as to costs and otherwise as to him may seem just, amend any defect or error in any proceedings; and all such amendments may be made as may be necessary for the advancement of justice, determining the real question raised by or depending on the proceedings, and best calculated to secure the giving of judgment according to the very right and justice of the case.

240. All notices required by these rules, or by the practice of the Court, shall be in manuscript or print, unless expressly authorized by the Court, or a Judge, or by these rules to be given orally.

PARTIES TO LEAVE ADDRESS WITH CLERK.

241. Whenever the plaintiff shall enter his claim for suit, or the defendant or any other party shall give notice of set-off, counter-claim or other defence, he shall give to the clerk his address, or that of his solicitor or agent, and the delivery of any notice to such plaintiff or defendant or other party, his solicitor or agent, or the mailing thereof by the clerk to such address, shall be a sufficient service, but the Judge may, in his discretion, put off a trial, or set aside, or

stay proceedings, on his being satisfied that there is good cause so to do.

AS TO UNAUTHORIZED FORMS AND PROCEEDINGS.

242. All proceedings, books and documents shall be in forms similar to the forms to these rules appended, where the same are applicable, and no printed forms shall be used by any clerk or bailiff of a Division Court unless in accordance with the forms appended to these rules, and if an unauthorized form shall be used no fee shall be payable to the officer in respect thereof, and in cases where no forms are provided, parties shall frame the proceedings or documents, using as guides those appended to these rules.

- (a) Any printed forms or books which, with the approval of the Judge, have been used previous to the framing and approval of these rules, may be used, unless and until the Judge shall otherwise order.

243. Except where otherwise provided by statute or by these rules, no order giving leave to take any proceeding need be drawn up or served unless the Judge shall otherwise order; but such leave shall be minuted in the procedure book.

PAYMENT INTO COURT.

244. When the plaintiff shall, in accordance with the 123rd or 126th sections of the Act signify to the clerk his intention to proceed for the remainder of his demand, and such signification shall be given within three days after he received notice of the payment into Court, but after the rising of the Court at which the summons was returnable, the case shall be tried at the then next sittings of the Court, and be put upon the list for that Court in the regular order, but upon application to him at any time the Judge may further postpone the trial.

245. When an action has been stayed, under the provisions of section 123 or of section 126 of the Act, the Judge

shall have power, upon application made for that purpose by the plaintiff, explaining in a satisfactory manner his omission to signify his intention to proceed, and after hearing the parties, to remove such stay and to allow the action to proceed, upon such terms as he shall deem just.

246. In an action of detinue the defendant may, with a tender of the subject of the action for the detention whereof the action is brought, pay money into Court as compensation for damages for the detention, thereof, and for injury caused thereto, or either or both, with costs of the action.

- (a) Where the defendant is desirous of paying money into Court, pursuant to this rule, the practice respecting the same shall, in all respects, be regulated by that under which a defendant may pay money into Court in other actions as provided by this Act and these rules.

SUITORS' MONEYS : HOW PAYABLE.

247. All moneys are payable to the parties at the office of the clerk, without the payment of any fee whatever. In case a party desires that money shall be transmitted to him, he shall give to the clerk written directions as to the mode of transmission, and in the absence of such directions the clerk shall not in any case transmit moneys of suitors. Moneys transmitted according to such directions shall be at the risk of the party who gave them. All necessary expenses incurred in transmission of moneys shall be borne by the party to whom transmitted, and may be deducted by the clerk.

248. When the clerk issues and transmits a transcript to the clerk of any other division, the plaintiff or person entitled to such money may by an order in writing, endorsed on the transcript, signed by such plaintiff, or person, direct the clerk of the foreign Court to pay over the money, when collected, to the transmitting clerk or clerk of the home Court, or in any other way the person so entitled may desire and direct.

249. All summary applications to a Judge in Chambers, other than applications for new trials, may be made on notice or by summons.

250. When anything required by the practice of the Court to be done by either party, before or during the hearing, has not been done, the Judge may, in his discretion and on such terms as he shall think fit, adjourn the hearing to enable the party to comply with the practice.

251. All applications to the Judge to set aside or stay any order, judgment, process or proceeding in any cause or matter in a Division Court, and all other applications, except in matters which may be disposed of upon an *ex parte* application to the Judge, and applications otherwise specially provided for by these rules, may be made *viva voce* at any sitting of the Court, if both parties be present, or upon affidavit, the opposite party having notice of such application and of the grounds thereof, and the order or decision of the Judge upon such application, if made at a sitting of the Court, shall be entered by the clerk as in other cases of order made; if made upon affidavit elsewhere it shall be mailed to the clerk or delivered at his office.

DISCONTINUANCE OF ACTION.

252. If the plaintiff desires to discontinue the action or matter against all or any of the parties thereto, he shall give notice thereof in writing (by post or otherwise) to the clerk and to every party as to whom he so desires to discontinue, and the party receiving such notice may apply to the Judge for an order against the plaintiff for the costs incurred before the receipt of such notice.

(a) Where in a contested case the defendant or other party has prepared for trial, and before the opening of the Court the plaintiff has withdrawn or discontinued the action, so short a time before the sitting of the Court that the defendant, or other party, cannot in the ordinary way be notified thereof, and without such notice the defendant *bona fide* and reasonably incurs expenses in

procuring witnesses or in attending Court, or in a contested case where a counsel fee might be ordered to be taxed if the case had proceeded to trial and the defendant has employed counsel or a solicitor, who has attended the Court to conduct the defence for him, the Judge may, in his discretion, order the plaintiff to pay such costs, or such disbursements, or counsel fee, or such portion thereof as to him may seem just.

ABATEMENT.

253. In case, owing to any cause, a sitting of the Court is not held on the day appointed, and the Court is not adjourned, then, unless the Judge shall otherwise order, no matter or action which should have been tried or heard at such sitting shall abate or be discontinued, but the same shall be considered to have been adjourned to the next sitting of the same Court, and shall, at such sitting, be entered upon the Judge's list of causes for trial.

254. Subject to rules of Court, the Judge of the County Court, or any other Judge acting for him, shall have power to sit and act at any time for the transaction of any part of the business of the Division Court, or for the discharge of any duty which by any statute or otherwise was formerly required to be discharged out of, or during the regular sitting of the Court.

255. Where the plaintiff's claim, or defendant's counter-claim or set-off, consists of a promissory note, or other instrument, or is on a guarantee, it shall not be necessary to copy the instrument upon which the claim is founded, but it may be set forth in particulars with reasonable certainty.

SATISFACTION OF JUDGMENT.

256. Any party to a judgment to whom accord and satisfaction or payment of such judgment has been made, may be required by the party against whom such judgment

has been rendered, to enter, or to authorize the clerk to enter satisfaction thereof, and in case of his refusal or neglect to do either, the Judge may, upon application therefor, order satisfaction to be entered by the clerk in the procedure book.

257. It shall be lawful for the Judge, upon the application of any party to an action or matter, and upon such terms as may be just, to make any order for the detention, preservation, inspection, surveying, or measuring of any property or thing being the subject of such action or matter, or as to which any question may arise therein, and for all or any of the purposes aforesaid to authorize any persons to enter upon or into any land or building in the possession of any party to such action or matter, and for all or any of the purposes aforesaid to authorize any samples to be taken, or any observation, plan, or model to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence.

258. Where an order is made for inspecting, surveying, measuring, weighing, making any experiment, or for taking any sample, or making any plan or model, by any person to be named therein, such order may include an order for the clerk or some other person to be named therein, to examine upon oath and take the deposition of the person so named as to such measure, weight or inspection, or the correctness of such survey, or the result of such experiment, or the fairness of such samples, or the accuracy of such plan or model, and such order may also empower any or either party to give the deposition so taken in evidence upon any trial or proceeding.

259. When by any contract a *prima facie* case of liability is established, and there is alleged as matter of defence a right to be relieved wholly or partially from such liability, the Judge may make an order for the preservation or interim custody of the subject matter of the litigation, or may order that the amount in dispute be brought into Court or otherwise secured.

260. So far as applicable these rules and the forms shall extend and apply to provisional counties, provisional judicial districts, territorial districts and temporary judicial districts.

261. Regular meetings of the board, when necessary, may be held upon the call of the chairman, or of any two members of the board, and at the city of Toronto.

AFFIDAVITS AND OATHS.

262. Every affidavit, and other proceeding of the like nature, shall be divided into numbered paragraphs, and shall state concisely such matters and facts as may be necessary to truly inform the Court.

263. Every affidavit shall be drawn up in the first person, stating the name of the deponent at the commencement in full, and his description and true place of abode, and shall be signed by him, and in any proceeding in the Court must be entitled in the Court and cause (if a cause has been commenced) stating the names in full of the parties as in the summons.

264. In every affidavit, made by two or more deponents, the names of the several persons making the affidavit shall be inserted in the jurat, except that if the affidavit of all the deponents be taken at one time by the same officer, it shall be sufficient to state that it was sworn by both (or all) of the above-named deponents.

265. All affidavits, other than those for which forms are given, shall state the deponent's sources of knowledge or what facts or circumstances deposed to are within the deponent's own knowledge, and his means of knowledge, and what facts or circumstances deposed to are believed by him, by reason of information derived from other sources than his own knowledge, and what such sources are.

266. Where an affidavit is sworn by any person who appears to the officer taking the affidavit to be illiterate or

blind, the officer shall certify in the jurat that the affidavit was read in his presence to the deponent, that the deponent seemed perfectly to understand it, and that the deponent made his signature in the presence of the officer; no such affidavit shall be used in evidence or read in the absence of this certificate, unless the Judge is satisfied that the affidavit was read over to and appeared to be perfectly understood by the deponent.

267. For ordinary affidavits in a cause, the general heading and conclusion, given in Form No. 22, should be used, except where another form is provided.

268. No affidavit having in the jurat or body thereof any interlineation, alteration or erasure, shall, without leave of the Judge, be read or made use of in any matter pending in the Court.

269. Oaths and affirmations administered to witnesses in open Court or upon any *viva voce* examination before the Judge, and to jurors and others, may be in the forms prescribed. (See Form 41.)

MARRIED WOMEN.

270. Married women are capable of suing and being sued in the Division Courts, as provided in The Married Women's Property Act (R. S. O. c. 132).

271. In every suit against a married woman, founded on a contract made by her during marriage, there shall be inserted in the particulars of claim words to the effect following: "The defendant, A. B., is a married woman, and had separate property when she contracted the liability in question, and contracted with respect to such separate property."

272. If the summons be a special summons, properly endorsed, and the defendant does not dispute the claim or deny the allegation with respect to the separate estate, the clerk may sign final judgment, pursuant to section 109 of the Act.

273. All judgments against a married woman in respect of liabilities incurred, whether for costs or otherwise, during marriage, shall be in the following form or to the like effect: "It is adjudged that the plaintiff (or defendant) do recover \$ and costs against the defendant (or plaintiff), such sum and costs to be payable out of her separate property, as hereinafter mentioned, and not otherwise; and it is ordered that execution hereon be limited to the separate property of the defendant (or plaintiff), A. B., not subject to any restriction against anticipation, unless, by reason of The Married Women's Property Act, the property shall be liable to execution notwithstanding such restriction."

274. Where a judgment is recovered against a married woman in respect of a debt contracted by her before marriage, the judgment may be in the form following: "It is adjudged that the plaintiff do recover the sum of \$ and costs against the defendant, A. B., such sum and costs to be payable out of her separate property, whether subject to any restriction against anticipation or not, and not otherwise."

TRIALS AND HEARINGS.

275. In cases where the hearing is by jury the Judge has the same power to nonsuit as in ordinary cases.

276. It is determined and ordered that the trial of a cause shall not be considered to have been concluded, in case the giving of judgment has been postponed by the Judge to a subsequent day, until the delivery thereof in writing at the clerk's office upon the day and at the hour named therefor by the Judge, or orally by the Judge at some sitting of the Court.

LEAVE TO DISPUTE PLAINTIFF'S CLAIM.

277. The leave to dispute the claim of the plaintiff in any action, before judgment, under section 112 of the Act, may be obtained on the *ex parte* application of the defendant, or his solicitor, on sufficient grounds being shown by affidavit.

ACTION PENDING IN ANOTHER COURT FOR SAME CAUSE.

278. Where, at the trial, it shall appear that an action for the same cause at the suit of the plaintiff is pending in any other Court, the Judge may order the trial to stand adjourned to a certain day, and unless before such day the action in such other Court shall have been discontinued, the action may be dismissed or stayed as the Judge shall determine.

INSPECTION OF PROPERTY BY JUDGE.

279. The Judge by whom any action or matter may be tried may, in his discretion, inspect, or order the jury to inspect, any property or thing concerning which any question may arise therein.

ADJOURNMENT OF SUIT.

280. Where a cause is adjourned, no order of adjournment shall be served on either party, except by direction of the Judge.

PUTTING OFF TRIAL.

281. Either party to an action or matter may, at any time before the hearing, and upon notice to the opposite party, apply to the Judge, in writing, for an order to put off the trial on account of the absence of a material witness (whose name should be stated), or other sufficient grounds, to be disclosed on affidavit, and the Judge, in granting or refusing the application, may impose such terms as to the payment of costs and otherwise as he thinks fit.

282. When a plaintiff avails himself of the provisions of section 106 of the Act, and proceeds against only one or more of the several persons jointly liable, the defendant sued may avail himself of any set-off, counter-claim or other defence to which he would be entitled, if all the persons liable were made defendants.

NEW TRIAL.

283. Application for new trial may be made *viva voce*, and determined on the day of hearing, if both parties be present; but if made when both parties are not present, it shall be in writing, and show briefly the grounds on which it is made, which grounds, if matters of fact requiring proof, shall be supported by affidavit.

- (a) A copy of the application and of every such affidavit, shall be served by the party making the same on the opposite party or his solicitor or agent, or left at his usual place of business, if within the division; or if without the division, then with the clerk, who shall, on receiving the fees and necessary postage, transmit the same forthwith to the opposite party.
- (b) The application and affidavits (if any), together with an affidavit of the service thereof on the clerk or the opposite party (as the case may be), shall be delivered to the clerk within fourteen days after the day of trial, to be by him, on receiving the fees and necessary postage, transmitted to the Judge, with a copy of the original claim, and other papers requisite to the proper understanding of the case, in manner hereafter stated, which delivery to the clerk shall operate as a stay of proceedings until the Judge's final decision on the application is communicated to the clerk, unless the Judge shall otherwise order.
- (c) The clerk, after receiving such papers, shall delay for six days forwarding the same to the Judge, to enable the opposite party to answer the same in writing or by affidavit, if facts stated by the applicant in his affidavit are disputed, at the end of which period the clerk shall transmit the whole of the papers to the Judge for his consideration. If the application be refused, or if

the party applying shall fail to comply with the terms imposed by the Judge, the proceedings in the suit shall be continued as if no such application had been made. The Judge, before deciding the same, may hear the parties on the matter of such application at the next sitting of the Court, or at such other time or place as he may appoint. The decision of the Judge shall be delivered to the clerk, or transmitted to him by mail, and such clerk shall notify the parties thereof, by mail or otherwise, and if a new trial be granted, the suit shall be tried at the next sitting of the Court, unless the Judge shall otherwise order.

(d) If the application be refused, or if the party applying shall fail to comply with the terms imposed by the Judge, the proceedings in the suit shall be continued as if no such application had been made.

(e) The Judge may, in his discretion, make it a condition of granting a new trial, that it shall take place before a jury, whether the first trial took place before a jury or not; but if either party required a jury to try the case, in the first instance, he shall be entitled to another jury, on depositing the necessary fees for summoning such jury; and in such case, the order for the new trial shall direct the summoning of a jury.

(f) Where, under the 144th section of the Act, judgment in writing is delivered at the clerk's office, application for a new trial may be made within fourteen days from the day of delivering such judgment.

284. If upon an application for a new trial, the Judge, instead of granting a new trial, pronounces the judgment which in his opinion ought to have been pronounced at the trial, the fact shall be noted in the procedure book, and the order for judgment shall be transmitted to the clerk.

285. It is considered and ordered (lest there be a conflict of decision or diversity of action in the exercise of the discretion with which the Judge is invested under section 146) that upon an application for a new trial, the Judge, instead of granting a new trial, may pronounce the judgment which, in his opinion, ought to have been pronounced by the Judge who tried the case without a jury, and that in that case only, may he order judgment to be entered accordingly; but that he has no such discretion or authority in dealing with an application for a new trial and setting aside a verdict of a jury. This rule shall not be construed to prevent a Judge, upon an application for a new trial in a jury case, from ordering that a nonsuit be entered, in case he shall be of opinion that he ought to have entered judgment of nonsuit at the trial.

NOTICE TO PARTIES OF ADJOURNMENT OF CASE.

286. In case neither of the parties appear at the trial, the Judge may either strike out the case or postpone the trial. In case of postponement, the clerk shall notify all parties by postal card of the adjournment and of the date of the sitting to which it has been adjourned.

INSPECTION OF DOCUMENTS.

287. When, in any action or matter, any party thereto is desirous of inspecting any document in which he has an interest, and which shall be in the possession, power, or control of any other party, he may, within four days from the day of the service of the summons, give notice to such other party, by prepaid and registered post letter, or otherwise, that he desires to inspect such instrument, at any place to be appointed by such other party, and being within the division in which the suit is brought, and such other party shall appoint a place accordingly; but if he neglects or refuses to appoint such place, or to allow the party giving the notice, or his solicitor or agent, to inspect it within three days from the day of receiving such notice, the Judge may, in his discretion, on the day of hearing, exclude such document from being given in evidence in such action or matter, or adjourn the cause for the purpose of such inspection, and make such order as to costs as he shall think fit.

FEES AND COSTS.

Counsel Fees.

288. Where, in a contested case for more than \$100, an agent has been employed by the successful party in the conduct of the cause or defence, the Judge shall not direct a fee to be taxed, pursuant to section 208 of the Act, unless such agent is a barrister or solicitor.

289. A case shall be considered "contested"

- (1) Where defence is put in, disputing a claim for more than \$100, and a counsel or solicitor has been retained to prosecute or defend the claim in Court, at the sittings, and the case comes down to trial, whether any actual contest is made at the Court or not.
- (2) Where a defence is put in, disputing a claim for more than \$100, and a counsel or solicitor has been retained to make an application under section 111, and an order is made therein by the Judge empowering the clerk to enter final judgment.
- (3) Where a defence is put in, disputing a claim for more than \$100, and a counsel or solicitor has been retained to prosecute the claim in Court, and the defendant afterwards and before the opening of the Court confesses judgment, or pays or settles the claim so short a time before the sitting of the Court that the plaintiff cannot in the ordinary way be notified thereof, and without such notice, the counsel or solicitor so retained to prosecute the claim *bona fide* attends the Court for that purpose.
- (4) Where a defence is put in, disputing a claim for more than \$100, and the defendant has retained a solicitor or counsel to defend the action for

him in Court, and the plaintiff does not appear in Court to prosecute his action, or withdraws or discontinues his action so short a time before the sitting of the Court that the defendant cannot in the ordinary way be notified of such withdrawal or discontinuance, and without such notice his solicitor or counsel *bona fide* attends the Court to defend such action.

290. A counsel fee may be ordered to be taxed in a contested case, under section 208—

- (a) Where the plaintiff's claim exceeds \$100;
- (b) Or, in the case of interpleader, where the money claimed, or the value of the goods or chattels claimed, or the proceeds thereof, exceed \$100;
- (c) Or, where, in interpleader, the damages claimed by, or awarded to either party against the other party, or against the bailiff, exceed \$60.
- (d) In all other cases mentioned and referred to in subsection (2) of section 148.
- (e) Where the defendant gives notice of set-off or counter-claim and establishes the same to an amount exceeding \$100, and judgment is given in his favour.

WITNESS FEES.

291. The clerk shall determine (subject to appeal to the Judge) what number of witnesses shall be allowed on taxation of costs; the allowance for whose attendance shall be according to the scale, and before allowing disbursements to witnesses, the clerk shall be satisfied that the witnesses attended, and that the claim or fee is just, and he may, and in case of dispute shall, require the party whose bill of costs is being taxed to furnish an affidavit of disbursements.

292. In case of any process or paper received for service or execution from a "foreign Court," the clerk so receiving the same and procuring the service or execution thereof shall, on returning the same, give a full and correct statement, in detail, of the items of all charges made for fees and disbursements in respect of such service or execution of process, and the clerk of the home Court shall report to the Judge of his own county any charge made by the clerk of the "foreign Court" in excess of the allowance for fees made by the tariff.

STAYING PROCEEDINGS.

293. The Judge may stay proceedings in a Division Court in any case in which, if the action were in the High Court, an order to stay might be made.

294. Proceedings may be stayed by order of the Judge in an action until security shall be given to the defendant for the costs of and incidental to his defence, in a case and under circumstances which would justify such an order being made in the High Court.

ALLOWANCE OF COSTS BY JUDGE.

295. Where the Judge directs a fee to be taxed to the successful party under section 208, or orders any other fees or costs to be taxed, or certifies for costs in any case, or where the allowance of any particular costs under any of the sections of the Act, or any of the rules of Court, or under any other statutory provision, the application therefor should be made at, or immediately after the trial or hearing, or final disposal of the cause. The Judge may make such direction or order on his list, at the time of the trial, or on the back of the summons, or when the action is finally disposed of, in case of a postponed judgment.

OFFICERS' FEES.

296. The fees set forth in the tariff marked "schedule of clerks' fees" and "schedule of bailiffs' fees" shall be the

fees to be received by the several clerks and bailiffs of Division Courts, on and after the day that these rules shall come into force, for and in relation to the duties and services to be performed by them as officers of the said Courts, and shall be in lieu of all other fees heretofore receivable for the same proceedings.

297. The clerk shall not be required to take any proceeding, unless and until the fee or fees therefor have been paid to him as provided by section 54 of the Act.

298. In every case in which an attachment has issued against an absconding debtor, or an execution has issued against the property of a judgment debtor, and a plaintiff or defendant, judgment creditor or other person interested in the claim, judgment or execution, who would be entitled to the proceeds thereof (if the money were made in satisfaction of the attachment or execution), insists upon the bailiff making an attempt to find property, whereby mileage and expenses are to be incurred, it shall be necessary for a deposit to be made with the clerk of the amount of bailiff's fees, and, provided a proper endeavour (although unsuccessful) has been made by the bailiff after such deposit of fees, to the satisfaction of the clerk, but subject to appeal to the Judge, to secure property whereon to levy in such case, he shall be entitled to such mileage.

299. Before an order may be made for issuing an execution for the payment of fees which ought to have been paid to the clerk in the first instance according to section 54, an application must be made to the Judge, upon affidavit of the facts, and a summons must issue for the party on whose behalf the proceedings upon which fees are alleged to be unpaid were taken, to show cause why payment thereof should not be enforced by order of the Judge and by execution, as provided by section 55 of the Act.

POSTAGE AND REGISTRATION OF LETTERS.

300. All letters enclosing any papers in a cause sent from one Division Court officer to another, or to a party to

a suit, or to the Judge, and unless otherwise provided for in the Act or by these rules, all necessary notices sent by the clerk shall be prepaid and registered; when papers are forwarded to the Judge, postage stamps for return postage must in all cases be enclosed. The costs of postage and registration shall in all cases be costs in the cause.

APPEALS FROM DIVISION COURTS.

301. In case of an agreement not to appeal (section 116) a memorandum of such agreement, in writing, shall be prepared and shall be signed by the parties, their solicitors or agents, and be filed with the clerk before the trial is entered upon.

302. When the Judge of the Court of Appeal has pronounced judgment, either party may deposit the same, or an office copy thereof, with the clerk of the Division Court, and upon being so deposited the judgment must be filed, and may be enforced as if it had been made by such Division Court.

303. A new trial in pursuance of the order of the Judge of the Court of Appeal, shall be entered for trial at the Division Court which shall be holden next after twelve clear days from the time when such order, or office copy thereof, shall have been deposited as aforesaid, unless the parties agree that it shall take place sooner, or the Judge otherwise order, and it shall be conducted in the same manner as any new trial granted by the Division Court itself.

304. If the order of the Judge of the Court of Appeal be that judgment shall be entered for either party, then such judgment shall be entered accordingly, and the successful party shall be at liberty to proceed on such judgment as on a judgment of the Division Court.

APPEALS

Under Master and Servant Act (R. S. O. c. 139), and amendments thereto, and under The Act to Impose a Tax on Dogs for the Protection of Sheep. (R. S. O. c. 214), and other Acts.

305. Appeals may be made by master or servant:

(1) Against any conviction or order for the payment of wages;

(2) Against any order or dismissal from service or employment, or

(3) Against any decision of any justice under the Act. The complaint before the justice in all cases being laid by the servant.

306. The forms, Nos. 247 to 250 inclusive, shall be used and applied in proceedings on appeals to the Division Court, under The Act respecting Master and Servant (R. S. O. c. 139, and amendments thereto), being varied where necessary to meet the particular case.

307. The said forms may also be used and applied, being varied for that purpose, in proceedings on appeals to the Division Court, under The Act to Impose a Tax on Dogs for the Protection of Sheep.

308. The said forms may also be used and applied, being varied for that purpose in proceedings on appeals to the Division Court, under The Consolidated Assessment Act, 1892, or under Acts amending the same.

309. The rules regulating the practice in appeals, under The Ditches and Watercourses Act, in so far as the same are applicable, and the practice is not provided for by the said Consolidated Assessment Act, shall govern appeals, under the said last mentioned Act.

MASTER AND SERVANT.

310. The appellant shall, before or at the time of the filing of the appeal bond, file with the clerk the notice of appeal and an affidavit of service thereof. (R. S. O. c. 139, s. 16).

311. The clerk shall, on the bond and the notice of appeal with an affidavit of service thereof being filed in his office, enter the cause in his procedure book.

312. The clerk may require from the sureties to the appeal bond an affidavit of justification showing their sufficiency as such sureties.

313. The clerk's approval of the bond and of the sufficiency of the sureties may be endorsed on such bond.

314. The appellant shall, at the time of the filing of the bond, furnish the clerk, in writing, with the post office address of the justice or justices against whose decision the appeal is made.

315. The clerk shall give notice, by registered letter, to such justice or justices of the filing and approval of the bond.

316. If the appellant require the appeal to be tried with a jury, he shall, at the time of the filing of the bond, file a notice and deposit with the clerk the proper and necessary fees.

317. If the respondent requires a jury, he shall, within four days after the service of the notice of appeal upon him, file with the clerk a notice requiring a jury, and shall at the same time deposit the proper and necessary fees.

318. The clerk and bailiff, respectively, shall be entitled to receive for their services the like fees as in suits in the Court, and the same and necessary disbursements shall be paid to the clerk before any proceeding is taken.

319. The clerk may issue, under the seal of the Court, subpoenas to witnesses, and the bailiff may serve the same; such subpoenas shall be in the form, as nearly as may be, of those used in suits in the Division Courts.

LINE FENCES.

320. The appellant shall deliver to the clerk of the Division Court a copy of the notice of appeal, with an affidavit of the service thereof, upon the fence-viewers and parties interested, and a copy of the award, certified by the clerk of the municipality.

321. The clerk shall immediately notify the Judge of such appeal.

322. Upon receiving the Judge's order, appointing a time and place for the hearing of the appeal, the clerk shall notify the fence-viewers and all parties interested, in the manner provided in The Line Fences Act for the service of notices.

323. If the time and place of hearing is at a sitting of the Division Court, the clerk shall enter the matter on the Judge's list of causes for trial at such sitting, and at the foot of such list, unless the Judge shall otherwise order.

324. The clerk may issue, under the seal of the Court, subpoenas to witnesses, and the bailiff may serve the same. Such subpoenas shall be in the form, as nearly as may be, of those used in suits in the Division Courts.

325. The clerk and bailiff shall, respectively, be entitled to receive for services the like fees as in suits in the Court, and the same and necessary disbursements shall be paid to the clerk before any proceeding is taken.

326. Rule No. 138 of these rules, as to preparation of special judgment, shall be applicable to matters under The Line Fences Act.

327. After the Judge has finally determined the appeal and made his order, the clerk shall certify to the clerk of the municipality the said order, and the award as altered or confirmed, together with the costs, if any, allowed, and by whom to be paid.

328. In case a sum of money has been paid by the appellant to the clerk as an indemnity against the costs of the appeal, such clerk shall hold the same, subject to the Judge's directions.

329. The forms Nos. 244 to 246 inclusive, shall be used and applied in proceedings on appeals to the Judge of the County Court, under The Line Fences Act (R. S. O. c. 219, s. 12). Where necessary the forms can be varied to suit the particular case.

DITCHES AND WATERCOURSES.

330. Immediately upon receiving from the clerk of the municipality the copy of the notice or notices of appeal and the certified copy of the award, the clerk shall notify the Judge, of the appeal.

331. Immediately upon the receipt of the Judge's order fixing the time and place of hearing the appeal, the clerk shall notify the engineer and all parties interested, in the manner provided in The Ditches and Watercourses Act for the service of notices.

332. If the time and place of hearing is at a sitting of the Division Court, the clerk shall enter the matter on the Judge's list of causes for trial at such sitting, and at the foot of such list, unless the Judge shall otherwise order.

333. The clerk may issue, under the seal of the Court, subpoenas to witnesses, and the bailiff may serve the same. Such subpoenas shall be in the form, as nearly as may be, of those used in suits in the Division Courts.

334. The clerk and bailiff shall, respectively, be entitled to receive for services the like fees as in suits in the

Court, and the same, and necessary disbursements, shall be paid to the clerk before any proceeding is taken.

335. Rule No. 138 of these rules, as to preparation of special judgment, shall be applicable to matters under The Ditches and Watercourses Act.

336. After the Judge has finally determined the appeal and made his order, the clerk shall certify to the clerk of the municipality the said order, and the award as altered or confirmed, together with the costs, if any, allowed, and by whom to be paid.

337. In case a sum of money has been paid by the appellant to the clerk as an indemnity against the costs of the appeal, such clerk shall hold the same, subject to the Judge's direction.

338. The forms Nos. 240 to 243, inclusive, shall be used and applied in proceedings on appeals to the Judge of the County Court, under The Act respecting Ditches and Watercourses (R. S. O. c. 220, and amendments thereto). Where necessary the forms can be varied so as to suit the particular case.

TARIFF OF FEES.

CLERKS.

1. Receiving claim, numbering and entering in procedure book \$ 15

(This item to apply to entering in the procedure book a transcript of judgment from another Court, but not an entry made for the issue of a judgment summons).

2. Issuing summons, with necessary notices and warnings thereon, or judgment summons (as provided in the forms), in all:

Where claim does not exceed \$20.....	40
“ exceeds \$20 and does not exceed \$60	50
“ exceeds \$60 and does not exceed \$100	60
“ exceeds \$100	1 00

(Note—In either of the last two preceding items value of goods to regulate the fee).

3. Copy of summons, including all notices and warnings thereon 25
4. Copy of claim (including particulars), when not furnished by plaintiff 25
5. Copy of set off or counter-claim (including particulars), when not furnished by the defendant 25

(Note—In either of the last two preceding items the fees may be taxed against the party ordered to pay costs).

6. Receiving and entering bailiff's return to any summons, writ or warrant issued under the seal of the Court (except summons to witness and return to summons or papers from another division) 15
 7. Taking confession of judgment..... 10
- (This does not include affidavit and oath, chargeable under item 8).

8. Every necessary affidavit, if actually prepared by the clerk, and administering oath to the deponent	25
9. Furnishing duly certified copies of the summons and notices and papers with all proceedings for purposes of appeal (under section 157) as required by either party, per folio of 100 words	05
10. Certificate therewith	25
11. Certifying under the seal of the Court and delivering to a judgment creditor a memorandum of the amount of judgment and costs against a judgment debtor, under the Creditors' Relief Act, or for any other purpose.....	25
12. Copies of papers for which no fee is otherwise provided, necessarily required for service or transmission to the Judge, each	10
If exceeding two folios, per folio	05
13. Every notice of defence or admission entered, or other notice required to be given by the clerk to any party to a cause or proceeding, including mailing but not postages	15
14. Entering final judgment by clerk, on special summons, where claim not disputed	50
15. Entering every judgment rendered at the hearing or final order made by the Judge.....	50

(Note—This fee does not apply to any proceeding on judgment summons).

(This one fee of 50 cents will include the service of recording at the trial and afterwards entering in the procedure book the judgment, decree and order in its entirety, rendered or made at the trial. If a garnishee proceeding before a judgment, the fee of 50 cents will be allowed for the judgment in respect to the primary debtor, and a like fee of 50 cents for the adjudication, whenever made, in respect to the garnishee).

TARIFF OF FEES.

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16. Subpœna to witness	25
(The subpœna may include any number of names therein, and only one original subpœna shall be taxed, unless the Judge otherwise orders).	
17. For every copy of subpœna required for service	05
18. Summons for jury (including copy for each jurymen) when required by the parties.....	1 25
19. Calling and returning jury ordered by the Judge	25
20. Every order of reference or order for adjournment made at hearing, and every order requiring the signature of the Judge and entering the same, including final order on judgment debtor's examination	25
(Any warning necessary with order, e.g., the warning in Form 73, forms part of the order).	
21. Transcript of judgment to another Division Court	25
22. Transcript of judgment to the County Court....	50
23. Every writ of execution, warrant of attachment, by the judgment creditor, or of warrant of same to bailiff.....	50
24. Renewal of every writ of execution, when ordered by the judgment creditor, or of warrant of commitment when ordered by the Judge.....	15
25. Every bond when necessary and prepared by the clerk (including affidavits of justification and of execution)	1 00
26. For necessary entries in the debt attachment book in each case (in all)	20
27. Transmitting transcript of judgment; or transmitting papers for service to another division, or to the judge, on application to him, including necessary entries and mailing, but not including postages	25
28. Receiving papers from another division for service, entering the same, handing to the bailiff, receiving and entering his return, and transmitting the same (if return made promptly, not otherwise)	30

29. Search, by person not party to the suit or proceeding, to be paid by the applicant.....	10
Search, by party to the suit or proceeding, where the suit or proceeding is over one year old....	10
(No fee is chargeable for search to a party to the suit or proceeding, if the same is not over one year old).	
30. Taxing costs in defended suits after judgment pronounced	25
31. Making out statement of costs in detail (including bailiff's fees) at the request of any party or for purpose of settlement or upon entering judgment by default	10
(Neither item 30 or 31 applies to statement of costs endorsed on summons or copy to be served).	
32. Taxing bailiff's costs under section 7 of the Division Courts Act, 1889	25
33. Copying and transmitting to municipal clerk Judge's decision in appeal	50

2. BAILIFF'S FEES.

1. Service of summons issued under the seal of the Court, or Judge's summons or order, on each person (except summons to witness and summons to juryman):	
Where claim does not exceed \$20.....	30
“ exceeds \$20 and does not exceed \$60	40
“ exceeds \$60 and does not exceed \$100	50
“ exceeds \$100	75
(In interpleader suits the value of the goods to regulate the fee).	
2. For every return as to service under item 1; attending at the clerk's office and making the necessary affidavit (as provided by Rule 183).	15
3. Service of summons on witness or juryman, or service of notice	15

TARIFF OF FEES.

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4. Taking confession of judgment and attending to prove	10
5. For calling parties and their witnesses at the sittings of the Court in every defended case, and at the hearing of every judgment summons..	15
6. Enforcing every writ of execution, or summons in replevin, or warrant of attachment, or warrant against the body, each:	
Where claim does not exceed \$20.....	50
" exceeds \$20 and does not exceed \$60	75
" exceeds \$60	1 00
(When goods replevied the value of the goods to regulate the amount of the fee). This fee does not include service of summons in replevin on defendant.	
Fees under Creditors' Relief Act (see section 7 of 52 V., c. 12, and s. 25 of R. S. O. c. 65) shall be taxed according to this tariff.	
7. Every mile necessarily travelled to serve summons, or process or other necessary papers, or in going to replevy goods, or to seize on attachment, or in going to seize on a writ of execution, where money paid on demand, or made on execution, or case settled after seizure	12
8. Mileage going to arrest under a warrant, when arrest made, per mile	12
9. Mileage carrying delinquent to prison, including all expenses and assistance, per mile	20
10. Every schedule of property seized, attached or replevied, including affidavit of appraisal, when necessary:	
Not exceeding \$20	30
Exceeding \$20 and not exceeding \$60.....	50
Exceeding \$60	75
11. Every bond, when necessary, when prepared by the bailiff, including affidavits of justification and of execution	50
12. Every notice of sale, not exceeding three, under execution or under attachment, each	15

13. Reasonable allowances and disbursements, necessarily incurred in the care and removal of property.
 - (a) If a bailiff removes property seized, he is entitled to the necessary disbursements in addition to the fees for seizure and mileage.
 - (b) If he takes a bond, then to 50 cents instead of disbursements, for removal of property.
 - (c) If assistance is necessary in the seizure, or securing, or removal, or retaining of property, the bailiff is entitled to the disbursements for such assistance.
 - (d) All charges for disbursements are to be submitted to the clerk for taxation, subject to appeal to the Judge.
 - (e) The bailiff must in all cases endorse a memorandum of all his charges on the back of the execution, or state them on a separate slip of paper, so that the clerk may conveniently tax the bailiff's charges for fees and disbursements.
 - (f) The clerk is in all cases to sign the memorandum of his taxation and preserve it among the papers in the cause, together with the execution, for future reference, and thereby enable the clerk to certify the bailiff's returns properly.
14. If execution, or process in attachment in the nature of execution be satisfied, in whole or in part, after seizure and before sale, whether by action of the parties or otherwise, the bailiff shall be entitled to charge and receive 3 per cent. on the amount directed to be levied, or on the amount of the value of the property seized, whichever shall be the lesser amount.
15. Poundage on executions, and on attachments in the nature of executions, 5 per cent., exclusive of mileage, for going to seize and sell, upon the amount realized from property necessarily sold.

3. FEES TO WITNESSES AND APPRAISERS.

Allowance to Witnesses.

Attendance, <i>per diem</i> , to witnesses residing within three miles of the place where the Court is held, if within the county.....	\$ 75
And if without the county.....	1 00
Attendance, if witness resides over three miles from the place of sittings, and within the county, <i>per diem</i>	1 00
Attendance, if witness resides without the county and more than three miles from the place of sittings, <i>per diem</i>	1 25
Barristers and solicitors, physicians and surgeons, engineers and veterinary surgeons, other than parties to the cause, when called upon to give evidence of any professional service rendered by them, or to give professional opinions, <i>per diem</i>	4 00

(Note.—Disbursements to surveyors, architects and professional witnesses, such as are entitled to specific fees by statute, are to be taxed, as authorized by such statute).

If witnesses attend in one case only, they will be entitled to the full allowance.

If they attend in more than one case, they will be entitled to a proportionate part in each cause only.

The travelling expenses of witnesses, over three miles, shall be allowed according to the sums reasonably and actually paid, but in no case shall exceed twenty cents per mile, one way.

FEES TO APPRAISERS.

Fees of Appraisers of Goods, etc., Seized under Warrant of Attachment.

To each appraiser, 50 cents, per day, during the time actually employed in appraising goods, to be paid in the first instance by plaintiff, and allowed in the costs of the cause.

FEES IN SUITS NOT EXCEEDING \$10.

(57 V. c. 23, s. 11).

CLERK.

For all services, from entering action, or suing out a judgment or interpleader summons, up to and including the entering of final judgment, or final order on any such judgment, or interpleader summons, in case the action proceeds to judgment or final order \$1 25

In case the action does not proceed to judgment or final order, the fees heretofore, or that may hereafter be payable, but not exceeding in the whole the said sum.

For issuing writ of execution, warrant of attachment, or warrant for arrest of delinquent, and entering the return thereto 50

BAILIFF.

For all services rendered in serving summons and making return, and any other service that may be necessary, before judgment is entered by the clerk or pronounced by the Judge, mileage excepted 40

For enforcing execution, schedule of property seized, or attached, bond, where necessary, and all other necessary acts done by him, after seizure, mileage excepted, if money made, or case settled, after levy 1 00

(Necessary disbursements incurred in the care and removal of property shall be allowed, to be first allowed by the clerk, subject to the approval of the Judge).

COUNTY COURT TARIFF.

The allowance to witnesses, according to the County Court Tariff, is as follows:

To witnesses residing within three miles of the Court	
House, <i>per diem</i>	\$1 00
To witnesses residing over three miles from the Court	
House	1 25
Barristers and solicitors, physicians and surgeons, other than parties to the cause, when called upon to give evidence in consequence of any professional service rendered by them, or to give professional opinions, <i>per diem</i>	4 00
Engineers, surveyors and architects, other than par- ties to the cause, when called upon to give evi- dence of any professional service rendered by them, or to give evidence depending upon their skill or judgment, <i>per diem</i>	4 00
If witnesses attend in one case only, they will be en- titled to the full allowance. If they attend in more than one case, they will be entitled to a proportionate part in each case only.	
The travelling expenses of witnesses over three miles shall be allowed, according to the sums reason- ably and actually paid, but in no case shall ex- ceed twenty cents per mile, one way.	

Fees allowed by The Act respecting Costs of Distress.—
The “additional distress” here referred to means that which
is necessary for the bailiff to make in order to realize the
amount of the rent over and above the moneys to be made
on the execution:

These fees are:—

Levying distress under \$80	\$1 00
Man keeping possession, <i>per diem</i>	75
Appraisement, whether by one appraiser or more— two cents in the dollar on the value of the goods:	
If any printed advertisement, not to exceed in all...	1 00
Catalogues, sale and commission, and delivery of goods —five cents in the dollar on the net produce of the sale—R. S. O. c. 63, p. 730.	

Under The Master and Servant Act, The Line Fences
Act, and The Ditches and Watercourses Act, the clerk and
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AN ACT RELATING TO THE DIVISION COURTS.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. Section 75 of The Division Courts Act is amended by adding thereto the following sub-section:— Rev. Stat. c. 60, s. 75, amended.

(2) Nothing in this section shall confer or be deemed to have conferred on a Division Court jurisdiction to grant injunctions in cases otherwise within the competency of the Court. Division Courts not to grant injunctions

2. Where a judgment has been recovered in an action in the Division Court, which, but for the enactment of the 5th section of chapter 14 of 60th Victoria, now sub-section 2 of section 79 of The Division Courts Act, could not have been recovered in the Division Court, the Court or Judge shall not commit the debtor to gaol upon or in connection with a judgment summons where a judgment debtor could or would not have been committed to gaol upon or in respect of a judgment recovered in a higher Court, or upon or by reason of an examination upon a judgment summons issued upon such last mentioned judgment. Judgment summons where principal and interest sued for separately

3. Sub-sections 2 and 3 of section 247 of The Division Courts Act are hereby repealed and the following substituted in lieu thereof:— Rev. Stat. c. 60, s. 247, sub-ss. 2, 3, 5, repealed.

(2) If he attends and refuses to be sworn or to make answer to such questions as may be put to him, and which in the opinion of the Judge are proper questions. Committal of judgment debtor.

Committal
of
judgment
debtor for
fraud.

4. Sub-section 5 of the said section is hereby repealed and the following substituted in lieu thereof:

5. If it appears that the judgment debtor had, when or since judgment was obtained against him, sufficient means and ability to pay the debt or damages or costs recovered against him, either altogether or by the instalments which the Court in which the judgment was obtained has ordered without depriving himself or his family of the means of living, and that he has wilfully refused or neglected to pay the same as ordered,

the Judge may, if he thinks fit, order such party to be committed to the common gaol of the county in which the party so summoned resides or carries on business, for any period not exceeding forty days.

Rev. Stat.
c. 60, s. 116,
sub-s. 1,
amended.

5. Sub-section 1 of section 116 of The Division Courts Act is hereby amended by adding the following thereto:—

“Upon the application of either party, within seven days after making the said order, and upon good grounds being shown, the Judge may set aside such order upon such terms as he thinks reasonable.”

Rev. Stat.
c. 60, s. 15,
sub-s. 2,
amended.

6. Sub-section 2 of section 15 of The Division Courts Act is amended by adding thereto the following proviso:—

“Provided that where the Judge fails to notify the sheriff, warden or inspector as aforesaid within one month after the sittings of the General Sessions of the Peace, the inspector may fix the time and place for considering the application and notify the Judge and sheriff accordingly.”

Rev. Stat.
c. 109, s. 55,
sub-s. 3,
amended.

7. Sub-section 3 of section 55 of The Unorganized Territory Act is amended by adding thereto the following proviso:—

“Provided that where the Judge fails to notify the sheriff and inspector as aforesaid within one month after the

sittings of the General Sessions of the Peace, the inspector may fix the time and place for considering the application and notify the Judge and sheriff accordingly."

8. Sections 3 and 4 of this Act shall not apply to claims, suits or proceedings upon debts contracted before the passing of this Act. Application of Act.

9. No suit or action shall be brought in the Division Court upon any judgment, decree or order for the payment of money made by the High Court or the County Court where execution may issue upon or in respect of such judgment, decree or order. Actions not to be brought on judgments of superior Courts.

AN ACT RESPECTING THE ATTACHMENT OF
MONEYS IN THE HANDS OF THE CROWN.

HER MAJESTY, by and with the advice and consent of
the Legislative Assembly of the Province of Ontario,
enacts as follows:—

Attach-
ment of
moneys in
the hands
of the
Crown.

1. Money payable by the Crown as represented by the Province of Ontario to any person, and money which is accruing due or which is about to become payable by the Crown as aforesaid, or by any of the Departments of the public service of Ontario, or by any person acting for and on behalf of Her Majesty the Queen in the Government of the Province of Ontario, whether the same is payable or about to become payable for wages or salary of any person employed in the public service or under contract or agreement with the Crown or with any Public Department as aforesaid, or otherwise, shall be subject to attachment for debt due by the person who would otherwise receive the same, in the same manner and to the same extent as money in the hands of, or payable by, or about to become payable by any person in the Province of Ontario, anything in any law, usage or custom to the contrary notwithstanding.

Service of
garnishee
order.

2. The delivery to the Treasurer of the Province, or to any officer employed in his Department, of a copy of the garnishee summons or order or writ of attachment, or other process issued out of any Court in the Province of Ontario, shall be a sufficient service of such garnishee summons or order or writ of attachment or other process.

AN ACT TO PROVIDE FOR THE GARNISHMENT OF
THE SALARIES OF CIVIL SERVANTS.

HER MAJESTY, by and with the advice and consent of
the Legislative Assembly of the Province of Ontario,
enacts as follows :—

1. The word “employee” when used in this Act shall ^{Interpre-}
for the purposes of this Act mean an officer, clerk or mes-
senger or other employee of the Government of the Province
attached or belonging to the departmental staff of the Civil
Service of Ontario at the seat of Government, and shall also
include the officers, clerks and employees of the Government
of the Province attached or belonging to the offices of the
Courts mentioned in section 32 of The Ontario Public Ser- ^{Rev. Stat.}
vice Act. ^{c. 15.}

2. Where a debt or money demand, not being strictly ^{Creditor}
a claim for damages, is due and owing to any party from an ^{may}
employee, either on a judgment or otherwise, and a debt is ^{garnish}
due and owing to such employee from the Crown, the party ^{money}
to whom the first mentioned debt or money demand is so ^{owing by}
due and owing (hereinafter designated the creditor) may ^{Crown to}
recover in the manner herein provided any debt due or owing ^{civil}
to the employee from the Crown, or sufficient thereof to ^{servant.}
satisfy the claim of the creditor, subject always to the rights
of other parties to the debts owing from the Crown.

3. The creditor may serve a notice personally on the ^{May serve}
Treasurer of the Province or on the Assistant Treasurer, or ^{notice on}
on some officer appointed by the Treasurer to receive the ^{Provincial}
same, specifying the nature of the claim, and showing the ^{Treasurer.}
name and residence of the employee and the nature of his
occupation in the service of the Crown; and the service of
such notice upon the Treasurer or Assistant Treasurer shall
have the effect, subject to the rights of other parties, of at-
taching and binding in the hands of the Treasurer all debts
then owing from the Crown to the employee, or sufficient



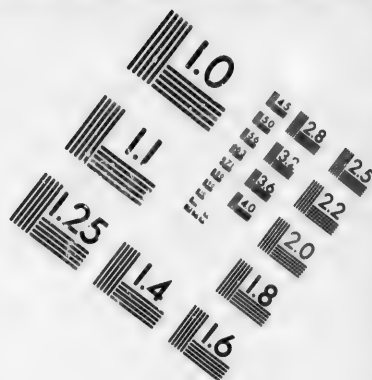
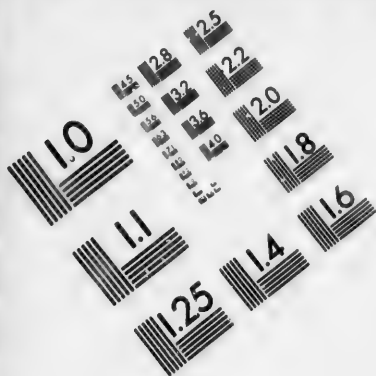
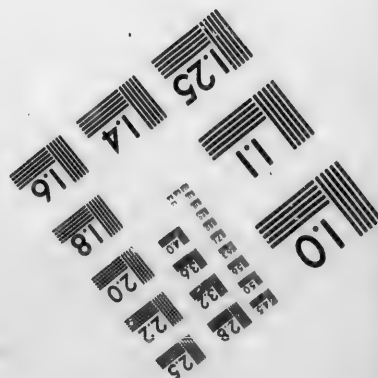
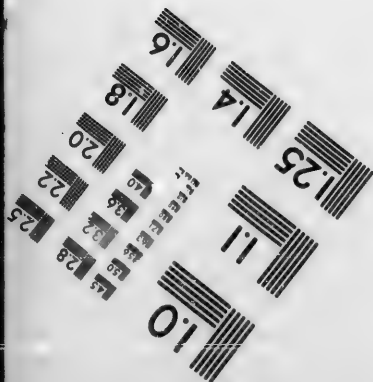
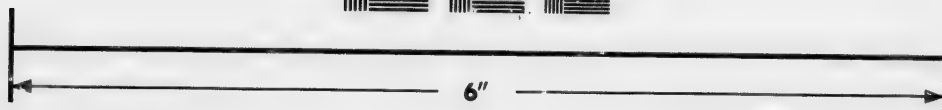
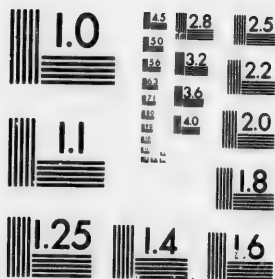


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thereof to satisfy the claim of the creditor, to the same extent as a garnishing or attaching order issued by or from a Court of law.

Treasurer
to retain
money due.

4. After service of a notice, as hereinbefore provided, the Treasurer shall, when the creditor's claim is a judgment, retain all moneys then owing from the Crown to the employee, or sufficient thereof to satisfy the judgment, and a payment into Court or to the creditor, or where an execution is in the hands of the sheriff or bailiff, then to the sheriff or bailiff, of the amount due to the employee, or of the amount due and costs unsatisfied on the judgment, shall be a discharge to that extent of the debt owing from the Crown to the employee.

Dispute
notice.

5. Where judgment has not been recovered for the claim, the creditor, besides serving a notice on the Treasurer or Assistant Treasurer, as in section 2 is provided, shall also serve a copy of such notice on the employee, together with a memorandum requiring the employee, if he disputes the claim, to file a disputing note with the Assistant Treasurer within ten days from the date of service.

Where no
dispute.

6. If no disputing note is filed, the Treasurer, on being satisfied that notice has been served on the employee, shall retain any moneys due and owing to such employee, and pay the same or a sufficient part thereof to satisfy the creditor's claim, subject to the provisions of the 9th section of this Act.

Where
dispute
notice
filed.

7. If a note disputing the claim is filed, the Treasurer may, with the consent of all parties, determine whether any and what sum (if any) is due by the employee to the creditor upon the claim, or he may require the creditor to bring an action therefor against the employee, and in such case he shall retain any moneys due and owing to the employee to abide the result of the action, or sufficient to pay any claim and costs which may be recovered in the action against the employee, provided such action is promptly prosecuted to judgment.

8. There shall be kept in the Treasury Department an attachment book in which shall be entered the names of parties, the dates of service of notices, the statement of claims, and the amount, if any, due and owing to the employee at the time of service. Treasurer to keep book.

9. This Act shall not apply to any debt contracted before the passing hereof, nor to any debt which does not exceed the sum of \$25, and then only to the extent of the excess, nor where the amount due to the employee does not exceed \$25, and then only to the extent of the excess, unless where such last mentioned debt was contracted for board or lodging. See Act of 1874, also c. 156, s. 7, R. S. O. 1897, also Division Court Act, s. 180. To apply to debts hereafter contracted.

10. Nothing in this Act shall authorize the bringing or maintaining of a suit against the Province or the Government or Treasurer thereof without the fiat of the Attorney-General, first had and obtained in accordance with the present practice. Attorney-General's fiat.

11. This Act shall come in force on the first day of May next. Commencement of Act

EXEMPTIONS.

The following are the exemption clauses, and have reference to executions from Division Courts, as well as other Courts:—

“2. The following chattels are hereby declared exempt from seizure under any writ, in respect of which this Province has legislative authority, issued out of any Court whatever in this Province, namely:

“1. The bed, bedding and bedsteads (including a cradle) in ordinary use by the debtor and his family;

“2. The necessary and ordinary wearing apparel of the debtor and his family;

"3. One cooking stove with pipes and furnishings, one other heating stove with pipes, one crane and its appendages, one pair of andirons, one set of cooking utensils, one pair of tongs and shovels, one coal scuttle, one lamp, one table, six chairs, one washstand with furnishings, six towels, one looking glass, one hair brush, one comb, one bureau, one clothes press, one clock, one carpet, one cupboard, one broom, twelve knives, twelve forks, twelve plates, twelve tea cups, twelve saucers, one sugar basin, one milk jug, one teapot, twelve spoons, two pails, one wash tub, one scrubbing brush, one blacking brush, one wash board, three smoothing irons, all spinning wheels and weaving looms in domestic use, one sewing machine and attachments in domestic use, thirty volumes of books, one ax, one saw, one gun, six traps, and such fishing nets and seines as are in common use, the articles in this sub-division enumerated, not exceeding in value the sum of \$150.

"4. All necessary fuel, meat, fish, flour and vegetables, actually provided for family use, not more than sufficient for the ordinary consumption of the debtor and his family for thirty days, and not exceeding in value the sum of \$40;

"5. One cow, six sheep, four hogs, and twelve hens, in all not exceeding the value of \$75, and food therefor for thirty days, and one dog;

"6. Tools and implements of or chattels ordinarily used in the debtor's occupation, to the value of \$100;

"7. Bees reared and kept in hives to the extent of fifteen hives. 50 V. c. 10, s. 1.

DIVISION COURTS

AND

LIMITS OF THE RESPECTIVE DIVISIONS

DISTRICT OF ALGOMA.

1.—Sault Ste. Marie—Bounded west by Thunder Bay district, 85th parallel of west longitude, and east by Barr River, including all the islands in front.

2.—Bruce Mines—Bounded west by Barr river, and east by the westerly boundary of the townships of Thessalon River, Kirkwood, Bridgeland and Houghton, and by said boundary line of the last three named townships, produced northerly.

3.—Thessalon—Bounded west by the westerly boundary of the townships of Thessalon River, Kirkwood, Bridgeland and Houghton, and the boundary line of the last named three townships, produced northerly, and on the east by the eastern boundary of the township of Sprague, produced northerly.

4.—Webbwood—Bounded on the west by the boundary line between the townships of Sprague and Lewis, produced north to the northern boundary of the district of Algoma, thence along the northern boundary of the said district, thence south along the eastern boundary to the waters of Lake Huron, thence westerly along the southern boundary of the district of Algoma to a point opposite the boundary

line between the townships of Sprague and Long, thence northerly to the said last-mentioned boundary line, thence easterly along the said southern boundary line of the township of Sprague to the place of beginning.

6.—Richard's Landing—Consisting of St. Joseph's Island.

COUNTY OF BRANT.

1.—Brantford—The city of Brantford and that part of the township of Brant not included in the other divisions hereinafter described. The townships of Onondaga and Tuscarora, and that part of the township of Brantford lying south of the Main road from Brantford to Hamilton and east of Fairchild's Creek.

2.—Paris—The town of Paris and that part of South Dumfries west of the line between lots 18 and 19, and that part of the first concession of the township of Brantford lying west of a continuation of the last-mentioned line.

3.—St. George—The remainder of the township of South Dumfries and of the first concession of the township of Brantford.

4.—Burford—The ten northern concessions of the township of Burford, and that part of the 2nd, 3rd, 4th and 5th concessions of the township of Brantford, west of the line between lots numbers 10 and 11, and that portion of the Kerr tract west of a continuation of the last-mentioned line.

5.—Scotland—The township of Oakland, the four southern concessions of the township of Burford and lots numbers 1 to 5, inclusive, in the ranges east and west of the Mount Pleasant road, in the township of Brantford, adjoining the township of Oakland.

COUNTY OF BRUCE.

1.—Walkerton—The town of Walkerton and township of Carriek, and all the township of Brant, south of the line between the 11th and 12th concessions in lots up to No. 25, and south of the line between concessions 9 and 10, in lots 26 to 34 inclusive.

2.—Teeswater—The village of Teeswater, all the township of Culross, and that part of the township of Greenock lying south of the line between the 11th and 12th concessions.

3.—Kincardine—The town of Kincardine and that part of the township of Kincardine lying south of a line drawn between the 9th and 10th concessions.

4.—Paisley—The village of Paisley and that part of the township of Brant lying north of a line drawn between the 11th and 12th concessions of the township of Brant.

That part of the township of Elderslie, except lots 16 to 36, both inclusive, in concessions 12, 13 and 14 of said township, except so much of said township as lies south of concession 12 and east of lot 25, and so much of the township of Brant as lies north and east of lot 25.

All the township of Greenock lying north of a line drawn between concessions 11 and 12 of said township.

Lots 26 to 35, both inclusive, in the 8th, 9th, 10th, 11th, 12th, 13th and 14th concessions of the township of Bruce; and that part of the township of Saugeen lying east of a line between lots 28 and 29, and south of the production of the town line between the townships of Arran and Elderslie to the Saugeen river.

5.—Port Elgin—All Saugeen township not included in No. 4, all that part of the township of Arran lying west of a line between lots 10 and 11 and north of Arran Lake and the outlet of said lake, and that part of the township of

Amabel lying north of the 10th concession and west of the eastern boundary of concession C of Amabel, and the villages of Port Elgin and Southampton.

6.—Underwood—The village of Tiverton, and that portion of Kincardine township north of a line drawn between concessions 9 and 10 in said township, and all the township of Bruce, except that part included in No. 4.

7.—Invermay—That part of the township of Elderslie not included in No. 4, and that part of Arran township not included in No. 5, that part of the township of Amabel which lies south of the 8th concession and east of concession lettered C in said township, and the village of Tara.

8.—Wiaraton—The village of Wiaraton, the township of Albemarle, and that part of the township of Amabel lying north of a line between the 9th and 10th concessions.

9.—Ripley—All the township of Huron.

10.—Lion's Head—All the township of Eastnor, Lindsay and St. Edmunds.

11.—Lucknow—The village of Lucknow; all of the township of Kinloss.

12.—Chesley—The village of Chesley; that part of the township of Elderslie lying east of the 25th side line and south of the 12th concession of said township; all that part of the township of Brant lying east of the 25th side line and north of the 9th concession of said township.

COUNTY OF CARLETON.

1.—Ottawa—Comprising all the city of Ottawa, and the township of Gloucester, to lot 15, inclusive; Rideau front and concessions 1 to 6, inclusive; Ottawa front and the islands in the Ottawa river opposite thereto.

2.—Fallowfield—All the township of Goulbourn; the 8th, 9th and 10th concessions of the township of Marlborough; all that portion of the township of Nepean south of the River Goodwood; and the 4th, 5th and 6th concessions thereof north of the same river to the boundary line between lots 20 and 21 in the last mentioned concessions.

3.—Carp—All the township of Huntley, and all the township of March, except lots 1 to 5, inclusive, in concessions 1, 2, 3 and 4 thereof.

4.—Fitzroy Harbor—All the townships of Fitzroy and Torbolton.

5.—Kars—All the township of North Gower; Long Island in the Rideau river and 1st, 2nd, 3rd, 4th, 5th, 6th and 7th concessions of the township of Marlborough.

6.—Metcalf—All the township of Osgoode; the 6th, 7th and 8th concessions Ottawa front and from lots 16 to 30, inclusive, of the Rideau front of the township of Gloucester.

7.—Mosgrove—All the township of Nepean, except the city of Ottawa, and the part of the said township lying south of the River Goodwood, and concessions 4, 5 and 6 north of said River Goodwood to the boundary line between lots 20 and 21 in said last mentioned concessions, and including also lots 1 to 5, inclusive, in concessions 1, 2, 3, and 4 in the township of March.

COUNTY OF DUFFERIN.

1.—Orangeville—The town of Orangeville, the township of East Garafraxa, and all that portion of the township of Amaranth lying south of the southerly boundary of lot number 26, in each concession of the township of Amaranth.

2.—Shelburne—The village of Shelburne, the township of Melancthon, and all that portion of the township of Amaranth lying north of the southerly boundary of lot number 26, in each concession of the township of Amaranth.

- 3.—Stanton—The township of Mulmur.
 - 4.—Mono Mills—The township of Mono.
 - 5.—Grand Valley—The township of East Luther.
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COUNTY OF ELGIN.

- 1.—St. Thomas—The townships of Bayham, Malahide and South Dorchester.
 - 2.—St. Thomas—The townships of Southwold and Yarmouth (except the city of St. Thomas).
 - 3.—Aylmer—The city of St. Thomas.
 - 4.—Dutton—The townships of Aldborough and Dunwich.
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COUNTY OF ESSEX.

- 1.—Sandwich—Town of Sandwich and township of Sandwich West.
- 2.—Amherstburg—Town of Amherstburg and townships of Alden and Anderdon.
- 3.—Kingsville—The village of Kingsville, and all that part of the township of Gosfield not included in Division No. 8.
- 4.—Oxley—The township of Colchester South, and all that part of Colchester North south of the 9th concession, exclusive of the said concession and the lots on both sides of Malden street.
- 5.—Leamington—Township of Mersea and village of Leamington.
- 6.—Bell River—The township of Rochester, the village of Belle River, the first concession of the township of Maidstone, and all north of the Middle road in said township of Maidstone.

7.—Windsor—Town of Windsor, the town of Walkerville and all that part of Sandwich East north of the Talbot Street range.

8.—Essex—The town of Essex, all that part of the township of Maidstone lying west of the first concession and south of the Middle road; so much of Sandwich East as is south of Talbot street, including the lots on both sides of said street to Nos. 306 and 307; all of Colchester north of the 9th concession, including said concession and lots on both sides of Malden street, and all that part of Gosfield lying north of concession 6, and extending as far east from the limits between Gosfield and Colchester as lot No. 12, including such lot in each concession north of concession 6, inclusive.

9.—Comber—The townships of Tilbury West and Tilbury North.

COUNTY OF FRONTENAC.

1.—Kingston—City of Kingston, townships of Garden Island, Wolfe Island, Howe Island and part of the township of Pittsburg.

2.—Kingston—Cataraqui, comprising the township of Kingston and the village of Portsmouth.

3.—Sydenham—Loughboro', comprising the townships of Loughboro' and Bedford.

4.—Verona—Verona, comprising the townships of Portland and Hinchinbrooke.

5.—Sunbury—Sunbury, comprising the township of Storrington and part of the township of Pittsburg.

6.—Sharbot Lake—Comprising the townships of Kennebec, Olden, Oso, Barrie, Clarendon, Palmerston, Miller, North Canonto and South Canonto.

COUNTY OF GREY.

1.—Owen Sound—The town of Owen Sound, the village of Brook, and the townships of Derby, Keppel, Sarawak and Sydenham.

2.—Durham—The town of Durham, the township of Egremont, and those portions of the townships of Bentinck, Normanby and Glenelg as follows: That part of the township of Bentinck lying east of the line between lots 30 and 31 in the 1st, 2nd and 3rd concessions south of the Durham Road, and in concessions 1, 2 and 3 north of the Durham Road, and east of the line between lots 15 and 16 in concessions 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 thereof. That part of the township of Normanby lying east of the line between lots 20 and 21, in the 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th and 18th concessions, and all the township of Glenelg, excepting that portion lying east of the line between lots 10 and 11 in the 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th and 15th concessions thereof.

3.—Meaford—The town of Meaford, the township of St. Vincent, and that part of the township of Euphrasia lying west of the line between the 6th and 7th concessions, and north of the line between lots 15 and 16.

4.—Heathcote—The township of Collingwood and the east half of the township of Euphrasia, excepting that part thereof lying west of the line between the 4th and 5th concessions, and south of the lots between lots 12 and 13, and east half of the township of Osprey.

5.—Flesherton—The township of Proton, the west half of the township of Osprey, and those parts of the township of Artemesia, consisting of the ranges of lots lying parallel to the Toronto and Sydenham road, and south of the line between lots 130 and 131, and concessions 1, 2 and 3 south of the Durham road, and 1, 2, 3, 4, 5 and 6 north of the said Durham road, and those portions of concessions 7, 8

and 9 lying east of the ranges of lots parallel with the Toronto and Sydenham road, and those portions of concessions 10, 11, 12, 13 and 14 lying east of the line between lots 30 and 31.

6.—Chatsworth—The township of Sullivan and the township of Holland, excepting those portions of concessions 9, 10, 11 and 12 lying south of the line between lots 15 and 16, and those portions of concessions 7 and 8 west of the ranges of lots lying parallel with the Toronto and Sydenham road, and the ranges of lots lying parallel with the Toronto and Sydenham road, and south of the line between lots 50 and 51.

7.—Hanover—All the lots from 1 to 30, inclusive, in the three concessions south, and the three concessions north of the Durham road, in the said township of Bentinck; and all the lots from 1 to 15, inclusive, in the 12th concession, from the 4th to the 15th concessions, inclusive, of the said township of Bentinck; and all the lots from 1 to 20, inclusive, in all the concessions from 4 to 18, inclusive, in the township of Normanby aforesaid.

8.—Markdale—All the lots from 51 to 130, inclusive, in all the concessions parallel to (and being north-east and south-west) of the Toronto and Sydenham road, in the townships of Artemesia, Glenelg, and Holland aforesaid; all lots to the westward of the dividing line between lots 30 and 31, in all the concessions from 10 to 14, inclusive, and all the lots from 1 to 5 in the 7th, 8th and 9th concessions, inclusive, which lie to the south-west of the 3rd concession, south-west of the said Toronto and Sydenham road, in the said township of Artemesia; all the lots from 1 to 12, inclusive, in concessions 5 and 6, and the lots from 1 to 15, inclusive, in the concessions from 7 to 12, inclusive, in the township of Euphrasia; all lots south of the allowance for road between lots 15 and 16 in the 9th, 10th, 11th and 12th concessions, and from lots 25 to 30, inclusive, in the 7th concession, and lots 28, 29 and 30, in the 8th concession of the said township

of Holland; and all the lots lying east of the allowance for road between lots 10 and 11, in all the concessions from 7 to 15, inclusive, in the said township of Glenelg.

COUNTY OF HALDIMAND.

1.—Caledonia—All the townships of Seneca except the first and second concessions, the Young tract, and the property of the late Richard Martin, and the late Robt. Weir; all the township of Oneida, except the first range north of the Cayuga line; the Dennis tract and the lots southerly of said tract.

2.—Cayuga—The whole of the township of North Cayuga, except that portion thereof lying north-east of side line between lots 12 and 13; the first and second concessions of the township of Seneca, excepting that portion thereof lying north-east of the side line between lots 12 and 13; the Young tract and the lands of the late Robert Weir and the late Richard Martin, Esquires; the first range of Oneida and north of Cayuga line; also the Dennis tract and river lots lying south.

3.—Dunnville—The townships of Moulton, Sherbrooke and Dunn, including the village of Dunnville.

4.—Rainham—The townships of South Cayuga and Rainham.

5.—Canboro'—The Township of Canboro', and those portions of North Cayuga and Seneca not included in the other divisions.

6.—Jarvis—The township of Walpole.

COUNTY OF HALIBURTON.

1.—Minden—The township of Glamorgan and Snowden, except that portion of both included in the 3rd division,

and all of the townships of Snowden, Lutterworth, Minden, Anson, Stanhope, Hindon, Sherbourne and McClintock.

2.—Haliburton—The townships of Dysart, Guilford, Havelock, Livingston, Lawrence, Eyre, Harburn, Dudley, Harcourt, Bruton, Clyde and Nightingale, and that portion of Monmouth not included in the 3rd division.

3.—Ursa—The township of Cardiff, the township of Monmouth (except lots 1 to 19 inclusive) in the 13th, 14th, 15th, 16th and 17th concessions; the south 12 concessions of the township of Glamorgan, and from lot 21, inclusive, to the eastern boundary in the south six concessions of Snowden.

COUNTY OF HALTON.

1.—Milton—All the territory comprised in the new survey of the township of Trafalgar, and the first ten lots in concessions 1, 2, 3, 4, 5 and 6 in the township of Esquesing, and the first five lots in concessions 7, 8, 9, 10 and 11 in said township.

2.—Oakville—That part of the township of Trafalgar known as the old survey.

3.—Georgetown—All the rest of the territory comprised in concessions 8, 9, 10 and 11 in the township of Esquesing not comprised in the first division.

4.—Acton—All the rest of the territory comprised in concessions 1, 2, 3, 4, 5 and 6 in the township of Esquesing.

5.—Nassagaweya—The township of Nassagaweya.

6.—Burlington—The township of Nelson.

D.C.A.—19

COUNTY OF HASTINGS.

1.—Belleville—To comprise the city of Belleville and the township of Thurlow; also all that portion of the township of Sidney lying south of the 8th concession, and east of the line between lots 18 and 19.

3.—Shannonville—The township of Tyendinaga, except that part called Deseronto.

4.—Tweed—The township of Hungerford.

5.—Stirling—All that part of the township of Sidney which lies to the north of the 8th concession, and to the east of lot No. 6 in each concession north of the 8th concession, and all that part of the township of Rawdon which lies to the south of the 9th concession, and that part of the township of Huntingdon south of the 6th concession; also block A and lots 1, 2, 3, 4, 5 and 6 in the 8th and 9th concessions of the township of Sydney (heretofore forming part of the 2nd division), together with all that portion of the township of Sidney lying north of the 7th concession, and east of the line between lots 6 and 7.

6.—Madoc—The townships of Madoc, Tudor, Limerick, excepting that part lying north of the 10th concession, and also that part lying west of lot 25 in the different concessions south of the 11th concession of said township, and including all that part of the township of Huntingdon north of the 6th concession of said township, the townships of Elzevir, Grimsthorpe, Cashel, excepting that part of Cashel lying north of the 10th concession of the said township.

7.—Deseronto—The village of Deseronto.

9.—Trenton—The town of Trenton, and all that part of the township of Sidney which lies to the west of lot 7 in each of the concessions of the said township, including Mill Island. Also, all of said township of Sidney lying south of the 8th concession and west of the line between 18 and 19, and east of the line between lots 6 and 7.

10.—Marmora—The townships of Marmora, Lake, and all that part of the township of Rawdon which lies to the north of the 8th concession.

11.—Maynooth—The townships of Herschell, Mont eagle, Carlow, Bangor, Wicklow and McClure.

12.—Umfraville—The townships of Wollaston, Faraday, Dungannon, Mayo, and all that part of the township of Cashel lying north of the 10th concession of said township, and all those parts of the township of Limerick lying north of the 10th concession, and west of lot No. 25 in the several concessions of the said township of Limerick.

COUNTY OF HURON.

1.—Goderich—Comprising that part of the township of Goderich to the north of the Cut Line and the Huron Road until the same meets the road allowance between the 13th and 14th concessions; then back along the Huron road to its junction with the Cut Line; then west by the road allowance between concessions 11 and 12 to the River Maitland; then along the River Maitland to Goderich, together with the township of Colborne.

2.—Seaforth—Comprising the township of McKillop, the town of Seaforth, and all that portion of the township of Tuckersmith not included in the third division, south of the blind line between the 7th and 8th concessions of the said township of Hullett.

3.—Clinton—Comprising the township of Hullett; that part of the township of Goderich not included in Nos. 1 and 7; 1st, 2nd, 3rd and 4th concessions, township of Stanley; 1st and 2nd concessions, township of Tuckersmith, L. R. S., north of lot 15, and that portion west of side road between lots 25 and 26, H. R. S., and town of Clinton.

4.—Brussels—Comprising the township of Grey; all of the township of Morris east of side road between lots Nos. 10 and 11 (which is not included in No. 12), and the village of Brussels.

5.—Exeter—Comprising the township of Usborne and Stephen, and the village of Exeter.

6.—Dungannon—Comprising the townships of Ashfield and West Wawanosh, except that portion east of Maitland river.

7.—Bayfield—Comprising the township of Goderich south of Cut Line and Huron road until the same joins the road between the 12th and 14th concessions of the township of Goderich; thence along the said concessions until the same joins the River Bayfield; all Stanley not included in number 3; and the village of Bayfield.

8.—Wingham—Comprising the village of Wingham, the township of Turnberry; all that part of East Wawanosh not included in No. 12, and all the township of Morris not included in Nos. 4 and 12.

9.—Wroxeter—Comprising the township of Howick and the village of Wroxeter.

10.—Zurich—Comprising the township of Hay.

11.—Crediton—Comprising the township of Stephen.

12.—Blyth—Commencing at the north-east angle of the township of Hullett; thence southerly along the easterly boundary of the said township of Hullett to the blind line, between the 7th and 8th concessions of said township; thence westerly along said line to the western boundary of the township; thence northerly along the westerly boundary of the township to the Maitland river at the south-eastern corner of the Maitland block; thence along the said river northerly till the western boundary of East Wawanosh is reached; thence northerly along said westerly boundary to the road

running between the 6th and 7th concessions of said township of East Wawanosh; thence easterly along said road to the easterly limit of said township; thence northerly along the gravel road to the road running between the 5th and 6th concessions of the township of Morris; thence easterly along said road to the line between lots 10 and 11; thence southerly along said line between the 6th and 7th concessions; thence easterly along said line to the line between lots 15 and 16; thence southerly to the boundary line between the townships of Morris and Hullett; thence easterly to the place of beginning, including the village of Blyth.

COUNTY OF KENT.

1.—Chatham—The first division to consist of the town of Chatham and that part of the townships of Dover East and West to the south of the 12th and 13th concession line of the township of Dover East; and that part of the township of Chatham south of the 12th and 13th concession line, and west of the side road between lots 12 and 13, from the first mentioned 12th and 13th concession line to the 5th and 6th concession line, and all south of the said 5th and 6th concession line, of said township; that part of the township of Harwich north of 5th and 6th concession line, by the eastern boundary; that part of the township of Raleigh north of the 16th concession to the west side road between lots 12 and 13 north to the 6th and 7th concession line, and all of the said township north of the said last mentioned line, and that part of the township of Tilbury East north of the 4th concession.

2.—Ridgetown—The second division to consist of that part of the township of Howard south of the 2nd and 3rd concession line by the eastern boundary (known as the Botany Road), and that part of the township of Orford south of the 10th and 11th concession line of said township.

3.—Dresden—The third division to consist of all that part of the Gore of Camden lying west of the 10th and 11th concession line, and that part of the township of Camden lying west of the side line between lots 6 and 1; the village of Dresden; and that part of the township of Chatham north of the 5th and 6th concession line and east of the side road between lots 12 and 13.

4.—Blenheim—The fourth division to consist of that part of the township of Harwich south of the 5th concession of the eastern boundary, and south of the 3rd concession by the western boundary, and that part of Raleigh south of the 15th concession and east of the side road between lots 12 and 13, and the road to the lake shore through lot 146 on the Talbot road.

5.—Wallaceburg—The fifth division to consist of the village of Wallaceburg, the Gore of Chatham, and that part of the township of Chatham northwest of the 12th and 13th concession line and west of the said road between lots 12 and 13, and that part of Dover East lying north of the 12th and 13th concession side road.

6.—Bothwell—The sixth division to consist of that part of the township of Howard north of the Botany road aforesaid, and of that part of the township of Orford north of the 10th and 11th concession line, the township of Zone, the town of Bothwell, the village of Thamesville, and that part of the Gore of Camden east of the 10th and 11th concession line, and that part of the township of Camden east of the side line between lots 6 and 7.

7.—Fletcher—The seventh division to consist of that part of Tilbury East south of the 3rd concession, the township of Romney, and that part of the township of Raleigh south of the 6th and 7th concession line and west of the side road between lots 12 and 13 in the said township, and the road through lot 147 on Talbot road.

COUNTY OF LAMBTON.

1.—Sarnia—The external boundaries of the township of Sarnia and the town of Sarnia.

2.—Watford—The external boundaries of the township of Warwick, including that portion of the village of Arkona south of the township line.

3.—Florence—The external boundaries of the townships of Euphemia and Dawn.

4.—Sombra—The external boundaries of the township of Sombra.

5.—Forest—The external boundaries of the township of Plympton.

6.—Thedford—The external boundaries of the township of Bosanquet, including that portion of the village of Arkona north of the township line.

7.—Mooretown—The external boundaries of the township of Moore.

8.—Petrolea—The external boundaries of the township of Enniskillen.

9.—Alvinston—The external boundaries of the township of Brock.

COUNTY OF LANARK.

1.—Perth—The townships of Drummond, Bathurst, South Sherbrooke, Burgess North, and that part of the township of Elmsley North, north of the Rideau river, within the county of Lanark and west of lot No. 12 in each concession.

2.—Lanark—The townships of Lanark, Dalhousie, Darling, Lavant and North Sherbrooke.

3.—Carleton Place—The township of Beekwith, and the first six lots in the first seven concessions of the township of Ramsay.

4.—Smith's Falls—The township of Montague, and that part of the township of North Elmsley from lot No. 1 to lot No. 12 in each concession, both inclusive.

5.—Pakenham—The township of Pakenham.

6.—Almonte—The township of Ramsay, with the exception of the first six lots on the first seven concessions of the said township.

UNITED COUNTIES OF LEEDS AND GRENVILLE.

1.—Brockville—To consist of the 1st, 2nd, 3rd, 4th, 5th, 6th and 7th concessions and broken front of the township of Elizabethtown, and the concession roads between them.

2.—Prescott—To consist of the 1st, 2nd, 3rd, 4th and 5th concessions, and broken front, and that part of the 6th, 7th and 8th concessions from the town line of Edwardsburgh to lot No. 18, inclusive of the township of Augusta, and the concession roads between them.

3.—Gananoque—To consist of the 1st, 2nd, 3rd, 4th and 5th concessions and broken front of the townships of Leeds and Lansdowne, respectively, and the concession roads between them.

4.—Kemptonville—To consist of the township of South Gower, the township of Oxford from the west side line of lots Nos. 11 in all the concessions of the eastern boundary of the township, and the gore of land between South Gower, Oxford and Edwardsburgh.

5.—Merrickville—To consist of the township of WOLFORD (except the 7th and 8th concessions and the allowance of road between them), lots Nos. 1 to 10, inclusive, in the

1st, 2nd, 3rd, 4th, 5th, 6th, 7th and 8th concessions of the township of Oxford, and the allowance of roads within and between them.

6.—Delta—To consist of the townships of Bastard and Burgess, and those parts of the township of Leeds and Lansdowne, on the north side of the rear of the 5th concession in each, respectively.

7.—Toledo—To consist of the townships of Kitley and Elmsley.

8.—Newboro'—To consist of the townships of North Crosby and South Crosby.

9.—Athens—To consist of that part of the townships of Escott and Yonge, in rear of the 4th concession of Yonge, and in the rear of the 6th concession of Escott; that part of the township of Elizabethtown, in rear of the 7th concession, and west of lot number 18 in the 8th, 9th, 10th and 11th concessions, and the allowances for roads embraced therein.

10.—Spencerville—To consist of the township of Edwardsburg.

11.—North Augusta—To consist of that part of the township of Augusta in rear of the 5th concession and west of lot No. 18, in the 6th, 7th and 8th concessions; the whole of the 9th and 10th concessions of the township of Augusta; the Gore between the townships of Oxford, Wolford and Augusta; that part of the township of Elizabethtown in rear of the 7th concession, and east of the commons, between lots No. 18 and 19 in the 8th, 9th and 10th concessions; the 7th and 8th concessions of the township of Wolford; lots Nos. 1 to 10, inclusive, in the 9th and 10th concessions of the township of Oxford; and the allowances for roads embraced therein.

12.—Caintown—To consist of the 1st, 2nd, 3rd and 4th concessions and broken front of the township of Yonge; the 1st, 2nd, 3rd, 4th, 5th and 6th concessions and broken front

of the township of Escott, and the allowances for roads embraced therein.

The said 1st, 2nd, 3rd and 12th divisions shall, respectively, embrace and comprehend within their limits those portions of the River St. Lawrence, and islands therein, within the exterior side lines of which such portions of said river and islands would lie and be, if such exterior side lines were produced and extended in that direction to the utmost limits of the Province.

COUNTY OF LENNOX AND ADDINGTON.

1.—Napanee—The town of Napanee; township of Richmond; all that part of North Fredericksburgh and Adolphustown lying north of Hay Bay; and all that part of North Fredericksburgh lying north of Big Creek.

2.—Bath—Comprises 1st concession of Earnestown, the village of Bath, the township of Amherst Island, and the 2nd, 3rd and 4th concessions of the said township of Earnestown, from the west limits thereof to the west limit of lot No. 21 in each concession.

3.—Adolphustown—Township of South Fredericksburgh and all that part of North Fredericksburgh and Adolphustown not included in division No. 1.

4.—Camden East—1st, 2nd and 3rd concessions of the township of Camden and the village of Newburg.

5.—Centreville—All that part of the township of Camden not included in division No. 4.

6.—Odessa—All that portion of the township of Earnestown, not included in the limits of division No. 2.

7.—Tamworth—Townships of Sheffield, Kalada, Anglesea, Abinger, Effingham, Ashby and Denbigh.

COUNTY OF LINCOLN.

1.—Niagara—The town and township of Niagara.

2.—St. Catharines—The township of Grantham (including the city of St. Catharines, the villages of Merriton and Port Dalhousie), and the township of Louth.

3.—Smithville—The townships of Caistor and Gainsborough, and the 9th concession of the township of Grimsby, including the 1st and 2nd ranges as part of the said concession.

4.—Beamsville—The villages of Grimsby and Beamsville; the township of Clinton and the township of Grimsby, except the 9th concession and 1st and 2nd included as part of the said 9th concession.

DISTRICT OF MANITOULIN.

1.—Gore Bay—The town of Gore Bay, the townships of Gordon, Allan, Campbell Mills, Burpee, Robinson, Dawson, the islands known as Cockburn, Barrie, Clapperton and the Duck Islands, and that part of the township of Billings lying west of the road allowance between lots 15 and 16 in the several concessions thereof and so much of the township of Carnarvon as lies west of Lake Mindemoya and north of the line between the 6th and 7th concessions thereof.

2.—Little Current—The town of Little Current, the township of Howland, and those parts of the townships of Sheguindah and Bidwell lying north of the line between the 6th and 7th concessions of Sheguindah, and 4th and 5th concessions of the township of Bidwell and the 6th and 7th concessions of the line between lots 17 and 18 in the township of Billings and the adjacent islands lying north and east of the said townships, except the Clapperton Island.

3.—Manitowaning—The townships of Assiginack, Tehkummah and Sandfield, and those parts of the township of Sheguindah lying south of the line between the 6th and 7th concessions of Sheguindah, and 4th and 5th concessions of the township of Bidwell and the 6th and 7th concessions of the township of Billings to the line between lots 17 and 18 of said township, and the township of Carnarvon, except so much of the same as lies west of Mindemoya lake, and all that part of Manitoulin lying east of the township of Assiginack, Manitowaning and South Bays and the islands adjacent thereto.

COUNTY OF MIDDLESEX.

1.—London—That part of the city of London lying to the west of Maitland street, with that portion of the township of London lying south of the line between the 4th and 5th concessions and west of the said street, produced northerly or a line in the same direction to the line between the said 4th and 5th concessions, and with that portion of the township of Westminster lying west of the main road leading south from Clark's Bridge across the Thames; south to the line between the 1st and 2nd concessions; and westerly to the line between lots 42 and 43, and extending northerly to the River Thames; and also including the village of London West.

2.—Parkhill—The villages of Parkhill and Ailsa Craig, the townships of East Williams and West Williams, and that portion of the township of Lobo lying north of the line between the 11th and 12th concessions; and east of the line between lots numbers 12 and 13.

3.—Lucan—The township of McGillivray and Biddulph, and the village of Lucan.

4.—Delaware—The township of Delaware, with that portion of the township of Westminster west of the line between lots 30 and 31 in the second concession; then southerly on the line between lots 20 and 21, to the southerly

limit of the township, including all west of said line, and also including all that portion of the front of said township of Westminster lying west of the line between lots numbers 42 and 43 not included in the first division; with that portion of the township of Caradoc lying south of the line between the 5th and 6th concessions, to the River Thames; and with that portion of the township of Lobo lying south of the line, between the 6th and 7th concessions, to the River Thames.

5.—Glencoe—The townships of Ekfrid and Mosa, including the villages of Wardsville, Newbury and Glencoe.

6.—Strathroy—Townships of Adelaide and Metcalfe; the town of Strathroy, with that portion of the township of Caradoc lying north of the line, between the 3rd and 4th concessions; with that portion of the township of Lobo which lies north of the 6th concession, and west of the line between lots 12 and 13 of the said township.

7.—Dorchester Station—The township of North Dorchester, north and south of the River Thames; that portion of the township of West Nissouri which lies south of the line between lots 14 and 15; and with that portion of the township of Westminster lying south of the line between the 1st and 2nd concessions, and east of the line between lots 30 and 31 in the second concession, and thence east of the line between lots 20 and 21, continued south to the southerly limit of the said township of Westminster.

8.—Arva—All that portion of the township of London which lies north of the line between the 4th and 5th concessions; that portion of the township of Lobo which lies north of the line between the 6th and 7th concessions, and east of the line between lots 12 and 13, to the line between the 11th and 12th concessions, and with all that portion of the township of West Nissouri which lies north of the line between lots numbers 14 and 15.

9.—London—That part of the city of London lying east of Maitland street; that part of the township of London lying south of the line between the 4th and 5th concessions and east of the said street, produced northerly or in a line in the same direction to the line between the said 4th and 5th concessions; and that part of the township of Westminster lying north of the line between the 1st and 2nd concessions, and east of the main road leading south from Clark's bridge, across the Thames.

DISTRICT OF MUSKOKA.

1.—Bracebridge—The village of Bracebridge, and the townships of Macaulay, McLean, Ridout, Monek and Cardwell, concessions 1, 2, 3, 4, 5, 6, 7, 8 and 9 in the townships of Stephenson, Bruce and Franklin, and that part of the township of Watt situated east of lot 21, in the several concessions thereof; and concessions 7, 8, 9, 10, 11, 12 and 13 in the townships of Muskoka and Draper.

2.—Gravenhurst—The village of Gravenhurst; the townships of Morrison, Ryder and Oakley, and concessions 1, 2, 3, 4, 5 and 6 of the townships of Muskoka and Draper.

3.—Huntsville—The village of Huntsville; the townships of Stisted, Chaffey and Sinclair; and concessions 10, 11, 12, 13 and 14 in the townships of Stevenson, Brunel and Franklin.

4.—Port Carling—The townships of Wood, Medora and Humphrey, and that part of the township of Watt situated west of lot 21 in the several concessions thereof.

DISTRICT OF NIPISSING.

1.—Sturgeon Falls—To be composed of the townships of Springer, Field, Badgerow, Caldwell, Kirkpatrick, Hugel,

Rattler, Dunnet, Hagar and Appleby, and all that part of the district of Nipissing which is situated west of the line between the Indian reserve and the township of Widdifield, produced north and south, to the boundary of the said district and east of the eastern boundary of the fourth division.

2.—Mattawa—To be composed of the townships of Mattawan, Orlig, Calvin, Papineau, Lauder, Pentland, Boyd, Osler, McLaughlin, Canisby, Sabine, Lyell, Airy, Murchison and Robinson, and all that part of the district of Nipissing situated east of the line between the townships of Bonfield and Calvin, produced south to the provisional county of Haliburton, and east of the line between the townships of Phelps and Orlig, produced north to the Ottawa river.

3.—North Bay—To be composed of the townships of Widdifield, Merrick, Mulock, Phelps, Ferris, Chisholm, Ballantyne, Wilkes, Biggar, Paxton, Butt, Devine, Hunter, McCraney, Finlayson, Peck, and all that part of the district of Nipissing situated west of the line between the townships of Phelps and Orlig, produced north to the Ottawa river and east of the eastern boundary of first division.

4.—Sudbury—To be composed of the townships of McKim, Neelon, Dryden, Awrey, Hawley, Blezard, and all that part of the district of Nipissing which is situated west of the line between the said township of Awrey and the township of Hagar, produced north and south to the boundary of the said district.

5.—Bonfield—To be composed of townships of Bonfield and Boulter.

COUNTY OF NORFOLK.

1.—Simcoe—The town of Simcoe, the Gore of the township of Woodhouse, and all that part of said township lying west of the side line between lots 5 and 6, together with that part of the 4th, 5th and 6th concessions lying west of the side line, between lots 12 and 13.

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2.—Waterford—The township of Townsend, and the village of Waterford.

3.—Windham Centre—The township of Windham.

4.—Ronson—The township of Middleton, and the village of Delhi.

5.—Vittoria—The township of Charlotteville.

6.—Port Rowan—The townships of North Walsingham, South Walsingham, and the village of Port Rowan.

7.—Fairground—The township of Houghton.

8.—Port Dover—The village of Port Dover, and that part of the township of Woodhouse not included in Division No. 1, viz.: all that part of the 1st, 2nd and 3rd concessions lying east of the side line, between lots 5 and 6, and that part of the 4th, 5th and 6th concessions lying east of the said line between lots 12 and 13 in said township.

UNITED COUNTIES OF NORTHUMBERLAND AND DURHAM.

1.—Bowmanville—Townships of Cartwright and Darlington, and the town of Bowmanville.

2.—Newcastle—Township of Clarke and village of Newcastle.

3.—Port Hope—Township of Hope and town of Port Hope.

4.—Millbrook—Townships of Cavan, Manvers, South Monaghan and village of Millbrook.

5.—Cobourg—Township of Hamilton and town of Cobourg.

6.—Grafton—Townships of Haldimand and Alnwick.

7.—Colborne—Township of Cramahe and village of Colborne.

8.—Brighton—Township of Brighton and village of Brighton.

9.—Warkworth—Township of Percy and village of Hastings.

10.—Wooler—Township of Murray.

11.—Campbellford—Township of Seymour and village of Campbellford.

COUNTY OF ONTARIO.

1.—Whitby—Including the townships of Whitby and East Whitby and the towns of Whitby and Oshawa.

2.—Greenwood—The township of Pickering.

3.—Port Perry—The townships of Reach and Scugog, and the village of Port Perry.

4.—Uxbridge—The townships of Uxbridge and Scott, and the town of Uxbridge.

5.—Cannington—The township of Brock and the village of Cannington.

6.—Beaverton—The township of Thorah, and all that part of the township of Mara lying south of the line, between the 4th and 5th concessions.

7.—Uptergrove—All that part of the township of Mara lying north of the line between the 4th and 5th concessions thereof, and the township of Rama.

COUNTY OF OXFORD.

1.—Woodstock—Comprising the town of Woodstock, the townships of Blanford, East Zorra, East Oxford, and that part of the township of North Oxford situated east of lot 16, and that part of West Oxford lying east of lot No. 7, to the Stage road, thence on the north side of the Stage road, to where the said road intersects the township of East Oxford.

2.—Drumbo—Comprises the township of Blenheim.

3.—Embro—Comprises the townships of West Zorra and East Nissouri.

4.—Norwich—Comprises the townships of North Norwich and South Norwich and the village of Norwich.

5.—Ingersoll—Comprises all those portions of the townships of North Oxford and West Oxford not comprised in the first division; the town of Ingersoll, and those portions of the 1st and 2nd concessions of the township of Durham west of the middle town line.

6.—Tilsonburg—Comprises the town of Tilsonburg, and all that portion of the township of Durham not included in the fifth division.

DISTRICT OF PARRY SOUND.

1.—Parry Sound—The town of Parry Sound, and the townships of Foley, McDougall, Cowper and Carling, and all that portion of the district lying to the west of the east boundary of Carling, produced to the French river.

2.—McKellar—The townships of McKellar, Croft, Hagerman, Ferguson, and all that portion of the district lying between the east boundary of Ferris and the west boundary of Ferguson, produced to the French river.

3.—Rosseau—Townships of Humphrey, Christie, Monteith and Conger.

4.—Burke's Falls—Townships of McMurrich, Perry and Armour.

5.—Maganetawan—The townships of Spence, Chapman, Ryerson, Lount, Proudfoot, Bethune and Sinclair.

6.—Commanda—That territory bounded on the west by the western boundaries of townships of Pringle and Patterson, and the western boundary of the township of Patterson, produced to French river and Lake Nipissing; on the east by the eastern boundary of the district of Parry Sound, and on the south by the southern boundaries of the townships of Himsworth, Gurd and Pringle.

7.—Sundridge—The townships of Machar, Laurier, Strong and Joly.

COUNTY OF PEEL.

1.—Brampton—Town of Brampton, township of Chinguacousy and northern division of township of Toronto Gore.

2.—Cooksville—Village of Streetsville, township of Toronto, and southern division of township of Toronto Gore.

3.—Caledon—Township of Caledon.

4.—Bolton—Village of Bolton, township of Albion.

COUNTY OF PERTH.

1.—Stratford—To consist of all that part of the township of North Easthope west of the line between lots 25 and 26, and south of the road between the 8th and 9th concessions, and all that part of the township of South Easthope west of the side line, between lots 25 and 26; all that part

of the township of Downie and Gore north north and east of the concession line, between the 10th and 11th concessions and the Oxford road; and all the township of Ellice from the 1st to the 13th concessions, inclusive.

2.—Mitchell—To consist of all that part of the township of Fullarton not included in division No. 3, and the townships of Hibbert and Logan.

3.—St. Mary's—To consist of that portion of the township of Downie west of the Oxford road, and south of the concession line between the 10th and 11th concessions; the township of Blanshard; all that part of the township of Fullarton comprising the 13th and 14th concessions, and south of a road leading from the Mitchell road, between lots 24 and 25, east to lot 3 in the 10th concession; thence east along the line between the 10th and 11th concessions to the town line.

4.—Shakespeare—To consist of that part of the township of North Easthope east of the line, between lots 25 and 26, and north of the 8th concession, inclusive, with the 9th and 10th concessions; all that part of the township of South Easthope not included in division No. 1.

5.—Milverton—To consist of the township of Mornington, and all that part of the township of Elma from lots No. 53 to 72, both numbers inclusive, of the 1st concession, and from lots Nos. 27 to 36, both numbers inclusive, in and from the 2nd to the 18th concessions, both concessions inclusive, of the said township of Elma; and concessions 14, 15 and 16 of the township of Ellice; and concessions 11th, 12th, 13th and 14th of the township of North Easthope.

6.—Listowel—To consist of the township of Wallace, and all that part of the township of Elma from the 1st concession to the 18th concession, both concessions inclusive, and comprising lots Nos. 1 to 52, both inclusive, of the 1st concession, and lots Nos. 1 to 26, inclusive, from the 2nd to the 18th concessions, both concessions inclusive.

COUNTY OF PETERBOROUGH.

1.—Peterborough—Composed of the town of Peterborough, the village of Ashburnham, the townships of North Monaghan and Ennismore, and all that part of the township of Harvey lying west of Pigeon lake and south of Bobcaygeon; and all the township of Smith lying south of the 7th concession; and all the township of Otonabee lying west of the 8th concession and north of lot 21 from the said 8th concession to the western boundary of said township of Otonabee; and all the township of Douro lying south of lots numbered 11; and all that part of the township of Dummer lying south of lots numbered 11 and west of the 5th concession.

2.—Norwood—Composed of the townships of Asphodel, Belmont and Methuen, and that part of the township of Dummer lying east of the 4th concession and south of lots numbered 11.

3.—Keene—Composed of all that part of the township of Otonabee lying east of the 9th concession; and all that part of said township of Otonabee lying south of lots numbered 22 and west of the 8th concession.

4.—Lakefield—Composed of all that part of the township of Smith lying north of the 6th concession; and all that part of the township of Douro lying north of lots numbered 10; and all that part of the township of Dummer lying north of lots numbered 10; and also of the village of Lakefield, and of the township of Galway; and all the township of Harvey, except that portion lying west of Pigeon Lake and south of Bobcaygeon.

5.—Apsley—Composed of the townships of Burleigh, Cavendish, Anstruther and Chandos.

UNITED COUNTIES OF PRESCOTT AND RUSSELL.

1.—L'Orignal—Comprises the whole of the township of

Longueuil, the municipality of the village of L'Orignal, and the first concession of the township of Caledonia.

2.—Vankleek Hill—Comprises all that part of the township of West Hawkesbury, extending from the front of the third concession to the rear of the said township.

3.—St. Eugene—Comprises the whole of the township of East Hawkesbury.

4.—Plantagenet—Comprises the township of North Plantagenet, and that part of the township of south Plantagenet lying north of the Nation river.

5.—Cumberland—Comprising the whole of the township of Cumberland.

6.—Russell—Comprising the whole of the township of Russell.

7.—Hawkesbury—Comprising the two front concessions of the township of West Hawkesbury, and the municipality of Hawkesbury village, within the same.

8.—Fournier—Comprising the township of Caledonia (excepting the first concession of the said township), and also that portion of the township of South Plantagenet lying south and east of the Nation river.

9.—Alfred—Comprises the whole of the township of Alfred.

10.—Clarence Creek—Comprises the whole of the township of Clarence.

11.—Grant—Comprises the whole of the township of Cambridge.

COUNTY OF PRINCE EDWARD.

1.—Picton—The town of Picton, the 2nd and 3rd concessions "Military Tract," from the west line of lot No. 13,

eastward; Gore "G"; 1st and 2nd concessions north of the Carrying place; 1st concession south-east of the carrying place, and 2nd concession north of Black river, including Gores "K" and "L" and McCa's Gores, all in the township of Hallowell; block "I" the concession north and east of East lake, and Gore "B" in the township of Athol, and 1st and 2nd concessions south of the Bay of Quinte, and Gore "A" in the township of North Marysburg, and 1st concession south-west of Green point, to the end of Carman's point in Sophiasburg.

2.—Milford—The township of South Marysburg, and the southern part of Athol, commencing at the outlet of East lake, thence down to the head of the lake, thence down to the base line between the 1st concession south and the 1st concession north of East lake, till it strikes the township line of Hallowell, thence down said township line till it strikes South Marysburg.

3.—Demorestville—The township of Sophiasburg, together with Big Island, excepting the 1st concession south-west of Green's point to the end of Carman's point.

4.—Ameliasburg—All that part of the township of Ameliasburg lying east of the line between lots Nos. 86 and 87, in the 1st, 2nd, 3rd and 4th concessions of said township, including Huff's Island.

5.—Wellington—That part of the township of Hillier not included in the 7th Division also the 1st and 2nd concessions north of West lake, and west of lot No. 7 in the said concession, and that part of Irwin gore lying north of and west of lot No. 7 in the 2nd concession, and the west part of the 2nd concession produced west of lots No. 74, in that concession, in the township of Hallowell.

6.—Bloomfield—Block (IV.) four, concession south side of West lake, 1st concession "Military Tract," 2nd and 3rd concession of said tract west of lots No. 13 in those concessions, Gore "E" 1st and 2nd concessions north of West lake

and east of lot No. 6 in those concessions ; the Gerrow gore and that part of Irwin gore not included in Division No. 5, and all that part of the 2nd concession produced east of lot No. 75 in the township of Hallowell.

7.—Consecon—All that part of the township of Ameliaburg lying west of the line between lots Nos. 86 and 87, in the 1st, 2nd, 3rd and 4th concessions of said township; all that part of the 4th and 5th concessions of the township of Hillier west of the line between lots Nos. 86 and 87, and the third concession west of the line between lots Nos. 22 and 23, with that part of the 2nd concession lying north of Pleasant Bay in the said township of Hillier.

8.—Waupoos—All the point lying east of the west line of Marshall's gore, the concession north of Smith's bay and Waupoos Island in the township of North Marysburg.

DISTRICT OF RAINY RIVER.

1.—Rat Portage—That part of the district composed of the territory to the north of the south-easterly shore of the Lake of the Woods, and a line drawn in a north-easterly direction from Rat Portage to the north end of Lake Manitou; thence in an easterly direction to the south end of the lake known as the lake where the river bends; thence in an easterly direction to a point where the said meridian of the most easterly part of Hunters Island intersects the Canadian Pacific Railway at the south-west angle of Hawke lake.

2.—Fort Francis—The territory lying south and east of the Lake of the Woods, and of the said line.

COUNTY OF RENFREW.

1.—Pembroke—Comprising the town of Pembroke, the townships of Pembroke, Stafford, Alice, Petewawa, Buchanan, Rolph, Wylie, McKay, Fraser, Herd, Clara and

Maria, and all that part of the township of Wilberforce from the 18th to the 25th concessions, both inclusive; and also all those parts of the 14th, 15th, 16th and 17th concessions of the same township of Wilberforce lying north of Snake river and east of Lake Dore.

2.—Beachburg—Comprising all that part of the township of Westmeath lying east and north of the Muskrat lake and river, and all those parts of the township of Ross, from the 5th to the 9th concessions, both inclusive, east of Muskrat lake, and from the 7th to the 13th (or the other) concessions of Ross, both inclusive, of the said township of Ross.

3.—Renfrew—Comprising the village of Renfrew, and the townships of Horton and Admaston, excepting the lots numbered 1 to 22, inclusive, in the 9th, 10th, 11th and 12th concessions, and the whole of the concessions numbering 13, 14, 15 and 16 in said township.

4.—Arnprior—Comprising the village of Arnprior and the township of McNab.

5.—Shamrock—Comprising the townships of Bagot, Blythefield, Brougham and Matawatchan, and all the lots numbered 1 to 22, inclusive, in the 9th, 10th, 11th and 12th concessions in the said township of Admaston, and the whole of the concessions numbered 13, 14, 15 and 16 in the said townships.

6.—Eganville—Comprising the townships of Grattan, Sebastopol, South Algoma, North Algoma, and all that part of the township of Wilberforce from the 1st to the 17th concessions, both inclusive, excepting those parts of the 14th, 15th, 16th and 17th concessions of said township of Wilberforce lying north of Snake river and east of Lake Dore.

7.—Cobden—Comprising the township of Bromley, and all that part of the township of Westmeath west of Muskrat lake, and all those parts of the township of Ross, from the 1st to the 4th concessions, both inclusive, east of Muskrat lake, and from the 1st to the 6th of the other concessions, both inclusive, of the said township of Ross.

8.—Rockingham—Comprising the townships of Brudenell, Radcliffe, Raglan, Lynedoch, Griffith, Hagarty, Sherwood, Jones, Richards and Burns.

COUNTY OF SIMCOE.

1.—Barrie—Comprising the town of Barrie, the township of Vespra, except that portion lying west of the Nottawasaga river, and excepting also lots Nos. 38, 39 and 40 in the 1st and 2nd concessions, and lots Nos. 1, 2 and 3 in the 3rd, 4th, 5th, 6th and 7th concessions, respectively. That portion of the township of Oro lying south of lots Nos. 21 in the 1st and 2nd concessions (including the Ranges), and south of lots Nos. 13 in the 3rd, 4th, 5th, 6th, 7th and 8th concessions, respectively; that portion of the township of Innisfil lying east of lots Nos. 5 in the 6th, 7th and 8th concessions, and that portion lying north of the 8th concession; that portion of the township of Essa lying north of lots Nos. 19 in the 7th, 8th, 9th, 10th and 11th concessions.

2.—Bradford—The village of Bradford; the township of West Gwillimbury, excepting thereout lots Nos. 1, 2, 3, 4 and 5 in the 14th and 15th concessions; the township of Innisfil, except that portion lying north of the 5th concession, and excepting also lots Nos. 1, 2, 3, 4 and 5 in the 1st, 2nd, 3rd, 4th and 5th concessions.

3.—Beeton—The township of Tecumseth, except concessions 12, 13, 14 and 15; the township of Adjala, except that portion lying north of lots Nos. 25 in the 8th concession thereof.

4.—Collingwood—The town of Collingwood, the village of Stayner, that portion of the township of Nottawasaga lying north of lots Nos. 18 in the twelfth concessions thereof; that portion of the township of Sunnidale lying north of the 8th concession; that portion of the township of Flos lying west of the Nottawasaga river; the islands in Lake Huron contiguous to the township of Nottawasaga.

5.—**Craighurst**—The township of Flos, except that portion lying west of the Nottawasaga river; the township of Medonte, except that portion lying east of the 10th concession; and north of lots Nos. 10 in the 9th and 10th concessions, respectively; that portion of the township of Oro lying north of the southern boundaries of lots Nos. 21 in the 1st and 2nd concessions, and north of the southern boundaries of lots Nos. 13 in the 3rd, 4th, 5th, 6th, 7th and 8th concessions respectively; lots 38, 39 and 40 in the 1st and 2nd concessions, and lots Nos. 1, 2 and 3 in the 3rd, 4th, 5th, 6th and 7th concessions of the township of Vespra.

6.—**Orillia**—The town of Orillia, the township of Orillia, southern division, the township of Orillia, northern division, except that portion lying north of lots Nos. 15 in the first seven concessions thereof; that portion of the township of Oro lying east of the 8th concession; that portion of the township of Medonte being composed of lots Nos. 1 to 6 (both inclusive) in the 11th, 12th, 13th and 14th concessions; the islands in Lake Simcoe contiguous to the townships and portions of townships above described lying wholly or for the most part opposite thereto.

7.—**New Lowell**—The township of Nottawasaga, except that portion lying north of lots Nos. 18 in the 12th concession thereof; the township of Sunnidale, except that portion lying north of the 8th concession; that portion of the township of Vespra lying west of the Nottawasaga river; that portion of the township of Essa lying north of lots Nos. 19 in the 1st, 2nd, 3rd, 4th, 5th and 6th concessions; that portion of the township of Tossorontio lying north of lots Nos. 20 in each of the seven concessions thereof.

8.—**Alliston**—The township of Essa, except that portion lying north of lots Nos. 19 in each of the eleven concessions thereof; the township of Tossorontio except that portion lying north of lots Nos. 20 in each of the seven concessions thereof; that portion of the township of Innisfil, being composed of lots Nos. 1, 2, 3, 4 and 5 in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th and 8th concessions; the 12th, 13th, 14th and 15th concessions of the township of Tecumseth; lots Nos. 1,

2, 3, 4 and 5 in the 14th and 15th concessions of the township of West Gwillimbury; that portion of the township of Adjala lying north of lots Nos. 25 in the eight concessions thereof.

9.—Penetanguishene—The town of Penetanguishene and the village of Midland, the township of Tiny; that portion of the township of Tay lying west of the 8th concession; the islands in Lake Huron contiguous to the township of Tiny, and to that part of the township of Tay, forming part of the ninth division, and lying wholly and for the most part opposite thereto.

10.—Coldwater—The township of Matchedash, that portion of the township of Orillia, northern division, lying north of lots Nos. 15 in the first seven concessions thereof; that portion of the township of Medonte lying north of lots Nos. 6, in the 11th, 12th, 13th and 14th concessions, and that portion lying north of lots Nos. 10, in the 9th and 10th concessions thereof; the township of Tay, except that portion lying west of the 8th concession; the island in Lake Huron, contiguous to that portion of the township of Tay forming part of the 10th division, and lying wholly or for the most part opposite thereto.

Note.—Each of the said several divisions shall include all allowances for roads embraced within its external limits, and shall also extend to the centre of every allowance for road lying external and adjacent to every such division, excepting always where any such last mentioned allowance is hereinbefore declared to belong to or form part of any particular division.

UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY.

1.—Williamstown—Township of Charlottenburg, in the county of Glengarry.

2.—Alexandria—Township of Lochiel, in the county of Glengarry.

3.—Cornwall—Town and township of Cornwall, in the county of Stormont.

4.—Dickinson's Landing—Township of Osnabruck, in the county of Stormont.

5.—Morrisburg—Township of Williamsburg, in the county of Dundas.

6.—Iroquois—Township of Matilda, in the county of Dundas.

7.—South Mountain—Township of Mountain, in the county of Dundas.

8.—Crysler—Township of Finch, in the county of Stormont.

9.—Bridge End—Township of Lancaster in the county of Glengarry.

10.—Chesterville—Township of Winchester, in the county of Dundas.

11.—Strathmore—Township of Roxborough, in the county of Stormont.

12.—Dominionville — Township of Kenyon, in the county of Glengarry.

DISTRICT OF THUNDER BAY.

1.—Port Arthur—All that part of the district lying west of the meridian of 87 degrees of west longitude, to the meridian of the most easterly part of Hunter's island, excepting therefrom the municipality of Neebing.

2.—(Dropped).

3.—Fort William—Comprising the municipality of Neebing.

COUNTY OF VICTORIA.

1.—Woodville—The first consists of the following townships, and parts of townships, viz.: of the 15th concession of the township of Mariposa, and the township of Eldon, except the ranges north and south of Portage road.

2.—Fenelon Falls—The second consists of the following

townships: all of the township of Fenelon, except that portion lying east of the Scugog river, and south of Sturgeon lake, and the township of Somerville.

3.—Bobcaygeon—The third consists of the township of Verulam.

4.—Omamee—The fourth consists of the township of Emily.

5.—Lindsay—The fifth consists of the town of Lindsay, township of Ops, and that portion of the township of Fenelon lying east of the Scugog river, and south of Sturgeon lake.

6.—Oakwood—The sixth consists of the township of Mariposa, except the 15th concession.

7.—Victoria Road—The seventh consists of the townships of Carden and Dalton, Laxton, Digby and Longford, and the township of Bexley, and that portion of the township of Eldon north of Portage road, and the range south of Portage road.

COUNTY OF WATERLOO.

1.—Berlin—All that portion of the township of Waterloo lying north of Block line on the west side of the Grand river, and that part of the upper block of the said township lying on the east side of the Grand river, north of lots Nos. 115, 109, 104, 86 and 95, to the Guelph township line, including the towns of Berlin and Waterloo.

2.—Preston—All that part of the township of Waterloo lying south of the Block line on the west side of the Grand river, and that part lying on the east side of the Grand river, south of the northern boundary of lots Nos. 115, 109, 104, 85 and 95, to the Guelph township line, including the villages of Preston and Hespeler.

3.—Galt—All that portion of the township of North Dumfries lying east of lot No. 19, in the 7th concession, and running a course with the eastern boundary of the said lot in

a northerly direction up to the 12th concession; thence along the eastern boundary of lot No. 23, in the said 12th concession, to the township line, including the town of Galt.

4.—New Hamburg—The township of Wilmot, including the village of New Hamburg.

5.—Linwood—The township of Wellesley.

6.—St. Jacobs—The township of Woolwich.

7.—Ayr—All that part of the township of North Dumfries lying west of the eastern boundary of said lot No. 18, in the 7th concession; thence along the eastern limits of said lot No. 19, the same course thereof, in a northerly direction to the 15th concession; thence along the westerly limit of lot No. 23, in the said 12th concession, to the township line, including the village of Ayr.

THE COUNTY OF WELLAND.

1.—Welland—Comprising the township of Crowland; that part of the township of Thorold lying south of the line between lots 178 and 195, running through to Pelham; that part of Pelham lying south of the 4th concession, and that part of Humberstone lying north of the concession line, between the 4th and 5th concessions, being the whole of the 15th concession and the town of Welland.

2.—Marshville—Comprising the township of Wainfleet.

3.—Fort Erie—Comprising the township of Bertie, and those parts of the township of Humberstone not included in Nos. 1 and 6, and the village of Fort Erie.

4.—Niagara Falls South—Comprising the township of Willoughby, the village of Chippawa, and that part of the township of Stamford south of the line between lots 136 and 137; easterly from the western limit of the township to the south-east angle of lot No. 133; thence north on the line between lots Nos. 132 and 133, to the northern boundary of the township, including the towns of Clifton and Navy Island.

5.—Thorold—Comprising those parts of the townships of Stamford, Thorold and Pelham, not included in any other division, and the town of Thorold.

6.—Port Colborne—Composing all the township of Humberstone, lying south of the 5th concession, and west of the side lines, between lots Nos. 9 and 10 in the several other concessions thereof, and the village of Port Colborne.

COUNTY OF WELLINGTON.

1.—Guelph—The town and township of Guelph.

2.—Moriston—The township of Puslinch.

3.—Rockwood—The township of Eramosa.

4.—Fergus—Consisting of the township of Nichol, excepting the 11th and 12th concessions; the municipality of Fergus; the first eight concessions of the township of Garafraxa, and lots 1 to 18, both inclusive, in concessions A and B of the township of Peel, lots 13, 14, 15, 16, 17 and 18, in concessions 18 and 19, and lots 19, 20 and 21, in the 17th concession of the township of Peel.

5.—Erin—The township of Erin.

6.—Elora—Consisting of the townships of Pilkington, and the 11th and 12th concessions of the township of Nichol; the municipality of the village of Elora, and lots numbers 10 and upwards belonging to the 9th, 10th, 11th, 12th, 13th, 14th, 15th and 16th concessions of Peel.

7.—Drayton—Consisting of concessions 1 to 16, inclusive, of the township of Maryboro', and concessions 1 to 16, both inclusive, of the township of Peel, except lots 19, 20, 21, 22 and 23 of those concessions in that township.

8.—Arthur—Consisting of that part of the township of Arthur, south and south-east of lot 15, on the west side of the Owen Sound road; lot 16 on the Owen Sound road, and lot 12 east of the Owen Sound road, in the township of

Arthur; that part of the township of Luther, from 1 to 16, both inclusive; and lots 1 to 12, both inclusive, of the 17th and 18th concessions of the township of Peel; lots 5 to 11, both inclusive, of the 19th concession of said township of Peel; and lots 19 to 23, both inclusive, of concessions "A" and "B" of said township of Peel.

(9.—The territory formerly comprised in this division is now in the county of Dufferin.)

10.—Harriston—Consists of the township of Minto.

11.—Mount Forest—Consists of the town of Mount Forest, and that part of the township of Arthur north of lot 16, west of the Owen Sound road; lot 17, on the Owen Sound road, and lot 13, east of the Owen Sound road.

COUNTY OF WENTWORTH.

1.—Hamilton—All that part of the township of Barton lying east of the line between lots 14 and 15, and all that part of Hamilton city east of Hughson street.

2.—Dundas—The whole of the township of Flamboro' West.

3.—Waterdown—The whole of the township of Flamboro' East.

4.—Rockton—The whole of the township of Beverley.

5.—Stoney Creek—The whole of the township of Saltfleet.

6.—Glanford—The whole of the township of Glanford.

7.—Binbrook—The whole of the township of Binbrook.

8.—Hamilton—All that part of the township of Barton lying west of the lines between lots 14 and 15, and that part of Hamilton city west of Hughson street.

COUNTY OF YORK.

1.—Toronto—The city of Toronto, east of Yonge street, at date of 14th September, 1875 (i.e., Bloor, Sherbourne and Howard streets on the north, the Don on the east, down to Queen street, and all south of Queen street as far as Lee avenue).

2.—Unionville—Concessions 5 to 11, inclusive, of the township of Markham; and concessions 5 to 10, inclusive, of the township of Whitchurch, from 1 to 10, inclusive, together with the villages of Markham and Stouffville.

3.—Richmond Hill—Concessions 1 to 4, inclusive, of the township of Markham; and concessions 1 to 4, inclusive, of the township of Whitchurch from lots 1 to 10, inclusive; and concessions 1 to 4, inclusive, of the township of Vaughan.

4.—Newmarket—The township of Whitchurch, from the line between lots 10 and 11, northward, and the township of East Gwillimbury.

5.—Sutton West—The townships of Georgina and North Gwillimbury.

6.—Lloydtown—The township of King and the incorporated village of Aurora.

7.—Woodbridge—Concessions 1 to 11, inclusive, of the township of Vaughan.

8.—Toronto Junction—All that portion of the township of York lying west of Yonge street, and the township of Etobicoke.

9.—West Hill—Township of Scarboro' and all that portion of the township of York which lies east of Yonge street and the village of Leslieville.

10.—Toronto—The city of Toronto, west of Yonge street, at date of September, 1875 (i.e., Bloor street on the north and Dufferin street on the west).

FORMS

ADOPTED UNDER THE REVISED RULES.

1. REVISED TARIFF CLERK'S FEES.
2. BAILIFF'S FEES.
3. FEES TO WITNESSES AND APPRAISERS.

No. 4. [The very elaborate form of procedure book adopted under this rule has been superseded by Schedule D to the Act].

5. FORM OF DEBT ATTACHMENT BOOK.

Name of Primary Creditor or Plaintiff.	Name of Primary Debtor or Defendant.	Date of judg- ment, if claim a judgment.	Amount unsatisfied, if claim a judgment.	Amount found due from Primary Debtor to Primary Creditor, when claim not a judgment.	Name of Garnishee.	Date of at- taching order or garnishee summons.	Date of service of attaching order or garnishee summons.	Amount ad- judged against gar- nishee.

6. CASH BOOK.

[illegible]

13. Every notice required to be given by Clerk.....	15
14. Entering final judgment by Clerk.....	50
15. Entering every judgment rendered at the hearing.....	50
16. Subpoena to Witness.....	25
17. For every copy of Subpoena.....	5
18. Summons to Jurymen, and copies.....	1 25
19. Calling Jury ordered by Judge.....	25
20. Every order of reference or other order.....	25
21. Transcript of Judgment to another Division.....	25
22. To County Court.....	50
23. Every Writ of Execution or Warrant.....	50
24. Renewal of every Writ of Execution, etc.....	15
25. Every Bond, when necessary, etc.....	1 00
26. For necessary entries in the Debt Attachment Book (in all).....	20
27. Transmitting, etc.....	25
28. Receiving Papers from another Division.....	30
29. Searches.....	10
30. Taxing costs after judgment.....	25
31. Making out statement of costs.....	10
32. Taxing Bailiff's costs.....	25
33. Copying and transmitting Judge's decision to Municipal Clerk.....	50
Totals.....	

NOTE. The No. in the left hand column refers to the No. in the Schedule of Clerk's Fees, where the items are given in full.

8. INDEX. FORM OF JUDGMENT DEBTORS' BOOK.

NAME OF DEBTOR. (Surname first.)	Date when the Ex- amination took place.	Number, and the style of the Cause in which he was examined.
Brown, Henry	16th January, 1893 . .	306, 1891, Hibbert v. Brown.
Brawberg, Joseph . .	4th March, 1893 . . .	39, 1891, Filchett v. Brawberg.
Benson, Patrick . . .	16th February, 1893 .	41, 1893, Platt v. Benson.

9. FORM OF ORDER BOOK.

Date, 189 .	(If Cause existing or Judg- ment signed.) Style of Cause.	Process or pro- ceeding to be issued or taken.	Signature of Party, or Soli- citor.
Jan. 12th, 1893	Smith v. Jones, No. 76, 1893	Issue execution	H. Smith.
Feb. 6th, "	Henry v. Jeffrey " 17, "	Issue subpoena.	B. Henry.
" 9th, "	Jackson v. Jones " 29, "	Enter judgment	B. Bell, Soli.
" 10th, "	Peter v. Bray " 14, "	Issue alias ex'n	Geo. James, Agent.

10. FORM OF FOREIGN SUMMONS BOOK.

1	2	3	4	5	6	7	8	9	Total Fees.	Remarks.
Date of receiving. 18	Court and Style of Cause.	Year No.	Name of Clerk from whom received.	Date when handed to Bailiff.	Date when returned by Bailiff.	Date when transmitted to Home Office.	Bailiff's Fees thereon.	Clerk's Fees thereon.		

Process Book of George Smyth, Bailiff of the 6th Division Court in the County of Elgin, made in pursuance of the Rule of Practice touching all Warrants, Precepts and Writs of Execution, acted on, or in hand, between the day of 18, and the day of 18, 1885.

[illegible]

13. BAILIFF'S CASH BOOK.

Under Rule 189, showing all payments received by him of moneys on executions or otherwise, from defendants, garnishees or others, from the day of 18

Dr.				Received.		Paid out.				Cr.	
Date.		What	From	Amount.	Date.		On what	To	Amount.		
18		suit.	Whom.		18		suit.	whom.			
				\$	cts.					\$	cts.

14. PARTICULARS OF CLAIM AND DEFENCE INCLUDING COUNTER-CLAIM.

PARTICULARS IN CASES OF CONTRACTS.

No. A.D. 18 .

A. B., of , claims of C. D., of , the sum of \$, the amount of the following account, viz.:

(Here give the account in reasonable detail, stating dates, items and sums.)

Or, The amount of the note (a copy of which is underwritten), together with the interest thereon.

Or, For that the said C. D. promised (here state shortly the promise), which undertaking the said C. D. hath not performed.

Or, For that the said C. D. by deed, under his seal, dated the day of , A.D. 18 , covenanted to, etc., and that the said C. D. hath broken said covenant whereby the said A. B. hath sustained damages to the amount aforesaid.

Or, For money agreed by the said C. D. to be paid by the said A. B., together with a horse of the said C. D. in exchange for a horse of the said A. B., delivered by the said A. B. to the said C. D.

Or, For that the said C. D., by warranting a horse to be then sound and quiet to ride, sold the said horse to the said A. B. yet the said horse was not then sound and quiet to ride.

Or, For that the said C. D., in consideration that the said A. B. would supply E. F. with goods on credit, promised the said A. B. that he, the said C. D., would be answerable to the said A. B. for the same to the extent and value of \$75, that the said C. D. did accordingly supply the said E. F. with goods to the price of \$59 and upwards:

Or, Butcher's meat supplied to you, full particulars entered in your pass book from time to time, from 27th August, 1889. to 12th September, 1890, \$24.75.

Or, Groceries supplied to you, full particulars in bills delivered weekly or monthly. (Dates as above.) \$28.49.

Or, Goods supplied to you out of my store, full particulars in detailed accounts given to you with each purchase. \$49.76.

(a) ON A GUARANTY.

A. B., of _____, in the county of _____, claims against C. D., of _____, in the county of _____, as principal, and against E. F., of _____, in the county of _____, as surety (or guarantor) \$100 for the price of goods sold by A. B. to C. D.

The following are the particulars:

Guaranty by E. F. of the price of woollen goods supplied to C. D. as follows:

1889 Febr'y 2, To goods	\$25 00
March 3, To goods	10 00
March 17, To goods	65 00
Total	\$100 00

(b) ON PROMISSORY NOTE AGAINST MAKER.

A. B., of _____, in the county of _____, claims against C. D. in the county of _____, as maker of a promissory note payable to E. F. or bearer (or order, as the case may be) of which plaintiff is the holder.

The following are the particulars:

To promissory note, dated 1st January, 1890 (principal) ..	\$50 00
(interest) ..	3 39
Total	\$53 39

(c) ON A PROMISSORY NOTE AGAINST MAKER AND ENDORSER.

(Same form of commencement as (a) *ante*), against C. D., of
 , in the county of , as maker, and E. F., of
 , in the county of , as endorser, of a promissory note (here state particulars as in form (b) *ante*).

(d) ON A BILL OF EXCHANGE AGAINST ACCEPTOR AND DRAWER.

A. B., of , in the county of , claims against
 C. D., of , in the county of , as acceptor, and
 against E. F., of , in the county of , as drawer
 of a bill of exchange.

The following are the particulars:

Bill of exchange for \$75, dated 1st January, 1889, drawn
 by the said E. F. upon and accepted by the said C. D., payable
 three months after date.

Principal	\$75 00
Interest	2 75
Total	\$77 75

(e) ON A BILL OF EXCHANGE AGAINST ACCEPTOR.

A. B., of , claims of C. D., of , in the county
 of , as acceptor of a bill of exchange.

The following are the particulars:

Bill of exchange, drawn by Amos Bentley,
 indorsed to plaintiff, accepted by you,
 due this day, 17th June, 1890, for\$29 00
 17th December, to interest 6 months..... 87

Total	\$29 87
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(f) ON A BOND.

A. B., of , in the county of , claims of C. D.,
 of , in the county of , \$79.40 for principal and
 interest due upon a bond due to A. B.

The following are the particulars:

Bond dated 1st January, 1889, conditioned for payment to A. B. of \$70 on the 26th December, 1889.

Principal due	\$70 00
Interest	9 40

Total	\$79 40
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(g) ON A COVENANT.

A. B., of , in the county of (same as above form (c), substituting the word "covenant" for "bond") to A. B.

The following are the particulars:

Deed dated 26th January, 1889, covenant to pay \$70 and interest to A. B.

Principal due	\$70 00
Interest	9 40

Total	\$79 40
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15. PARTICULARS OF PLAINTIFF'S CLAIM IN ACTIONS OF TORT.

A. B., of , claims from C. D., of , \$60 for damages. For that the said A. B. has suffered damages from personal injuries to the said A. B., and damages to his carriage and harness, caused by the said C. D. (or his servant) on the 15th January, 1892, negligently driving a waggon and horse on Talbot Street, Southwold.

PARTICULARS OF EXPENSES.

Charges of Dr. VanBuskirk, surgeon	\$25 00
Charges of Mr. Jones, carriage-maker	10 00
Charges of Robert McCully, harness-maker	5 00

\$40 00

Personal injuries	20 00
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The said A. B. claims\$60 00

Or * For that the said C. D. deprived the plaintiff of and converted to his own use the following goods of his, viz.:

Sept. 10, 1889—One table-cloth	\$ 3 00
One piano	50 00
A lot of chairs	7 00
Total	\$60 00

Or * For illegally distraining his goods at No. 67 Charles Street, Toronto.

Or * For illegally arresting and imprisoning him at Colborne Street, Brantford.

Or * For that the said C. D. did on or about the day of , A.D. 189 , at the township of , unlawfully [break and injure a waggon of the said A. B.] or [falsely represent L. O. as fit to be trusted, the said C. D. at the same time knowing that the said L. O. was insolvent, whereby the said A. B. was induced to give him credit] or [assault and beat the said A. B.] or as the case may be, stating the tort sued for in concise language).

Any of the foregoing forms of particulars of causes of action may be used as forms for counter-claim, reversing the names of parties.

15 (a). PARTICULARS IN CASES OF DETINUE.

A. B., of , states that C. D., of , on the day of A.D. 189 , unlawfully detained from the said A. B. his goods and chattels, that is to say, a horse named "Bob Foster," also a harness and sulky.

The said A. B. claims a return of the same or their value, and \$ for their detention.

16. PARTICULARS OF CLAIM IN ACTION FOR DAMAGES TO LANDS BY FLOODING.

(Applicable only to certain judicial districts under 52 V. c. 16, sections 13 and 17, being "An Act respecting Damage to Lands by Flooding in the new Districts.")

(This form can only be used when the proceeding is by ordinary summons), (commencement same as in form *ante* 15).

1. For that the defendant constructed a drain and flooded four acres of the plaintiff's lands, being lot No. , in the concession, and thereby has done damage to the plaintiff to the extent of \$20, of which damages the following are the particulars:

Four acres of land rendered useless.....	\$10 00
Value of crop of oats on the land.....	10 00
Total	\$20 00

A. B.,
Plaintiff.

2. For that the defendant is a mill owner (or a person engaged in lumbering), and has caused damage to the lands of the plaintiff by overflowing the same for the purpose of driving logs (or timber or a sawmill) to the amount of \$20, which he claims from the defendant. (See 52 V. c. 16, ss. 13 and 17.)

17. FORM OF PARTICULARS OF CLAIM IN CASE OF A SUIT ENTERED UNDER SECTION 82.

(Same in all respects as forms 14 to 16, with the following conclusion, "And the plaintiff enters this suit and claims to have it tried and determined in this Court because the place of sitting thereof is the nearest to the residence of the defendant.")

18. PARTICULARS IN ACTIONS AGAINST A CLERK OR BAILIFF AND HIS SURETIES.

No. . A.D. 18 .

Henry Bray, of claims of John Noakes, clerk (or bailiff) of the Division Court for the County of . and of E. F. , of , and G. L. , of (sureties for and parties with the said John Noakes to a covenant for the due performance of the duties of his said office) the sum of for moneys had and received by the said John Noakes as such clerk (or bailiff) as aforesaid, in a certain cause in the said Division Court, wherein the

said Henry Bray was plaintiff, and one H. S. was defendant, to and for the use of the said Henry Bray, the payment whereof the said John Noakes unduly withholds. And also (stating in like manner any other similar claim)—[or the sum of for damages sustained by the said Henry Bray through the misconduct (or neglect) of the said John Noakes in the performance of the duties of his said office: For that on the day of , at (describe in ordinary language the neglect or misconduct, whereby the damage was occasioned)].

HENRY BRAY.

19. DEFENCES.

TITLE OF COURT AND STYLE OF CAUSE.

Take notice that I will admit, on the trial, the first, second and third items of the plaintiff's particulars to be correct (or the signing or endorsement of the promissory note sued upon, or as the case may be), or,

Take notice that I dispute the claim of the plaintiff (or here specify all or any of the grounds of defence, statutory or otherwise, set forth in the form for clerk's notices).

Dated this day of , A.D. 189 .
X. Y.

To the clerk of the Court and to the said plaintiff.

In actions against an executor or administrator;

(1) The defendant does not admit, but denies the plaintiff's claim.

Or (2) The defendant admits the plaintiff's claim, but not the assets.

Or (3) The defendant admits assets, but not the plaintiff's claim.

Or (4) The claim is barred by the Statute of Limitations.

Or (5) Payment was made by deceased.

Or (6) The claim is fraudulent in the following particulars.
(Here set out particulars briefly.)

Or (7) The defendant is entitled to a set-off of which the following are the particulars.

(Here show particulars).

Or (8) The claim was released by deed dated the day
of 189 .

Or (9) Notice was given and assets distributed under Re-
vised Statutes of Ontario, chapter 110.

Particulars of the notice:

Advertisement in The Chronicle newspaper, of January 10th,
1890; Toronto Mail, 5th January, etc.

(Here set forth the titles of the papers and dates of issue in
which the advertisements were inserted).

(Sgd.)

A. B.
Defendant.

20. SET-OFF.

STYLE OF CAUSE.

In the Division Court in the county of
No. , A.D. 18 .

(Style of Cause).

Take notice that I intend to avail myself of the law of set-
off, and at the hearing of this cause will claim a set-off against
the plaintiff's demand, the particulars of which set-off are hereto
annexed, or (hereunder written).

Dated the day of A.D. 18 .

To the above named plaintiff and to CHARLES DYKE,
the clerk of the said Court. Defendant.

21. COUNTER-CLAIMS.

In the Division Court in the county of

Between A. B., Plaintiff,

and

C. D., Defendant.

The promissory note was given as the consideration for a
horse sold by the plaintiff to the defendant.

The plaintiff warranted the horse to be sound, but it was wholly unsound and of no value.

The defendant counter-claims damages for breach of warranty \$100.

The defendant disputes (or admits) the plaintiff's claim.

The plaintiff was indebted to one John Orr in \$100 on account of goods sold and delivered by the said John Orr to the plaintiff, a statement which is as follows, viz.:

(Here copy the account).

The plaintiff by writing assigned the said account to the defendant on the third day of June, 18 , before this suit.

The defendant counter-claims \$100.

The defendant has suffered damage by the plaintiff's breach of a contract for the sale and delivery, by the plaintiff to the defendant, of 100 tons of Pennsylvania cannel coal at \$5 per ton, f.o.b. at Port Stanley, by equal monthly deliveries over the first five months of 1892.

The April and May instalments were not delivered.

Particulars of the damages are as follows:

Difference between the market price in April and May and the contract price, at \$2.50 per ton on forty tons, \$100.

The defendant counter-claims \$84 arising from the following facts:—

Downs & Company contracted with the plaintiff to erect certain buildings for him in the city of St. Thomas, at a schedule of prices and to complete them by the 1st of October, 1891. The plaintiff entered into possession of them. At that time there was due from the plaintiff to Downs & Company, in respect of the contract, a balance of \$84, and all conditions had been performed and all times had elapsed necessary to entitle Downs & Company to recover that sum from the plaintiff.

By deed of the 5th November, 1892, Downs & Company assigned to the defendant, all their interest in the debt of \$84, and on the 6th November the defendant gave the plaintiff notice of the assignment, but the plaintiff never paid the debt.

The defendant says that the contract contained a clause, whereby it was provided that the plaintiff should complete the work by the 31st March, 1889, and in default thereof should pay

the defendant \$2 for every subsequent day during which the work should remain unfinished, and it so remained unfinished for 31 days to the 1st of May, the defendant counter-claims \$62.

The plaintiff's claim is for a horse sold by the plaintiff to the defendant for \$75. The plaintiff warranted the horse to be sound and good to work, but it was unsound and balky.

The defendant in due time tendered the horse back to the plaintiff in liquidation of the debt, but the defendant refused to accept the horse or to cancel the sale or any part of the debt.

The defendant sold the horse at public auction for \$25 without warranty, that being the best price he could obtain for the horse, and counter-claims \$60, as an equitable defence, and for a breach of warranty, and for the keep of the horse and expenses of sale; and pays the \$15 into Court.

On the 20th day of July, 1889, the plaintiff unlawfully assaulted, beat and wounded the defendant, whereby he became sick, sore and injured, and was unable to follow his employment, and so remained for three weeks.

The defendant was obliged to employ a surgeon to heal his wounds, and to administer medicines during his sickness and thereby incurred expense.

The defendant counter-claims \$60 damages.

The plaintiff claims wages for work done for the defendant under an entire contract to serve him during the five summer months of 1890, from the beginning of the spring work until the end of the harvest, at \$25 per month and board and washing. Before the termination of the contract, the plaintiff, without leave of the defendant, wrongtully quitted work, and left his employ without cause.

The defendant was obliged to employ other workmen, and suffered loss by being obliged to pay larger wages to labourers during harvest time, and counter-claims for \$35.

AFFIDAVITS AND OATHS.

22. GENERAL FORM OF HEADING AND CONCLUSION OF
AFFIDAVITS.

(Except where otherwise given.)

In the Fifth Division Court in the County of Brant.

Between Aaron Burr, Plaintiff,

and

Charles C. Dyke, Defendant.

I, Aaron Burr, of Paris, in the county of Brant, cordwainer
make oath and say as follows:

Sworn at Paris, in the county of |

Brant, this day of

one thousand eight hundred and

Before me

Clerk. |

(Signature).

23. AFFIDAVIT FOR LEAVE TO SUE A PARTY RESIDING
IN AN ADJOINING DIVISION.

In the Division Court in the county of

I, A. B., of , yeoman, (or I, E. F., of
yeoman, agent for A. B. of, etc.,) make oath and say1st. That I have a cause of action against C. D., of
yeoman, who resides in the Division in the county of
(if by agent, "That the said A. B. has a cause of action against
C. D., of , yeoman.")2nd. That I (or the said A. B.) reside in the Division.
in the county of

3rd. That the distance from my residence (or from the said A. B.'s residence) to the place where this Court is held is about _____ miles, and to the place where the Court is held in the Division in the county of _____ is about _____ miles.

4th. That the distance from the said C. D.'s residence to the place where the Court is held in the Division where he resides, is about _____ miles, and to the place where this Court is held about _____ miles.

5th. That the said Division and this Division adjoin each other, and that it will be more easy and inexpensive for the parties to have this cause tried in this Division than elsewhere.

A. B. (or E. F.)

24. AFFIDAVIT FOR LEAVE TO SUE IN A DIVISION, ADJOINING ONE IN WHICH DEBTORS RESIDE, WHERE THERE ARE SEVERAL.

In the _____ Division Court in the county of _____

I, A. B., of _____, yeoman, make oath and say (or E. F., of _____, yeoman, agent for A. B., of, etc.) make oath and say:

1st. That I have (or that the said A. B. has) a cause for action respectively against each of the debtors named in the first column of the schedule, on this affidavit indorsed.

2nd. That the columns in the said schedule, numbered respectively 1st, 2nd, 3rd, 4th, 5th, 6th and 7th, are truly and correctly filled up, according to the best of my knowledge and belief.

3rd. That the Divisions named in the second and third columns of the said schedule, opposite each debtor's name, respectively adjoin each other.

4th. That it will be more easy and inexpensive for the parties to have the said causes, respectively, tried in this Division, than elsewhere.

Sworn, etc.

A. B. (or E. F.)

25. SCHEDULE REFERRED TO IN THE WITHIN AFFIDAVIT.

COLUMNS.

1st.	2nd.	3rd.	4th.	5th.	6th.	7th.
Debtor's name, place of residence, and addition.	Division in which suit is to be commenced.	Division in which debtor resides.	Number of miles from creditor's residence to where Court held in Division in which debtor resides.	Number of miles from creditor's residence to where Court held in Division in which suit to be commenced.	Number of miles from debtor's residence to where Court held in Division where suit to be commenced.	Number of miles from debtor's residence to where Court held in Division where debtor resides.
John Doe, of Saltfleet, County of Wentworth, yeoman.	Division No. 3, County of Lincoln.	Division No. 1, County of Wentworth.	22	1	5	17
Rich'd Roe, of Mome Esquire, County of Simcoe.	Division No. 3, County of Simcoe.	Division No. 8, County of Simcoe.	28	11	18	1

A. B. (or E. F.)

26. AFFIDAVIT FOR ATTACHMENT AGAINST ABSCONDING DEBTOR.

(If made after suit commenced insert style of Court and cause.)

I, A. B., of the in the County of (or I, E. F., of etc., agent for the said A. B., of etc.), make oath and say:

1st. That C. D., of (or late of) in the county of is justly and truly indebted to me (or to the said A. B.) in the sum of dollars and cents, (the amount here stated must not exceed \$100 or be less than \$4. If the claim is for a sum in excess of \$100, such excess must be abandoned, unless the claim be for the recovery of a debt or money demand the amount or balance of which does not exceed \$200, and the amount or original amount of the claim is ascertained by the signature of the defendant. See sections 70 and 249, 255) on a promissory note for the payment of dollars and cents, made by the said C. D., payable to me (or the said A. B.) at a day now past;

Or for goods sold and delivered	}	by me (or the said A. B.) to the said C. D.;
Or for goods bargained and sold		
Or for crops bargained and sold		
Or for money lent		
Or for money paid for the said C. D.		

Or for and in respect of my (or the said A. B.) having relinquished and given up to and in favour of the said C. D., at his request, the benefit and advantage of work done and materials found and provided and moneys expended by me (or the said A. B.) in and about the farming, sowing, cultivating and improving of certain land and premises;

Or for the use by the said C. D., by my permission (or by the permission of the said A. B.) of messuages and lands of me (or the said A. B.)

Or for the use by the said C. D. of pasture land of me (or the said A. B.) and the eatage of the grass and herbage thereon by the permission of me (or the said A. B.);

Or for the wharfage and warehouse room of goods deposited, stowed and kept by me (or the said A. B.) in and upon a wharf, warehouse and premises of me (or the said A. B.) for the said C. D., at his request;

Or for horse meat, stabling, care and attendance provided and bestowed by me (or the said A. B.) in feeding and keeping horses for the said C. D. at his request; or for work done and materials provided by me (or the said A. B.) for the said C. D. at his request;

Or for expenses necessarily incurred by me (or the said A. B.) in attending as a witness for the said C. D., at his request, to give evidence upon the trial of an action at law then depending in the Court, wherein the said C. D. was plaintiff and one E. F. defendant.

Or for money received by the said C. D. for my use (or for the use of the said A. B.);

Or for money found to be due from the said C. D. to me on an account stated between us (or to the said A. B. on an account stated between them) (or other cause of action, stating the same in ordinary and concise language). See form *ante* 14 for causes of action in matters of debt or contract.

2nd. I further say that I have good reason to believe, and do verily believe that* the said C. D. with intent and design to defraud me (or the said A. B.) of my (or his) said debt, hath absconded from this Province, leaving personal property liable to seizure under execution for debt in the said county of

(Or instead of matter between the asterisks.)

The said C. D. is attempting to remove his personal property liable to seizure under execution for debt out of this Province, or from the county of to the county of in this Province; with intent and design to defraud me (or the said A. B.) of my (or his) said debt; (or the said C. D. keeps concealed in the county of in this Province to avoid service of process) with intent and design to defraud me (or the said A. B.) of my (or his) said debt.

3rd. That this affidavit is not made by me, nor the process thereon to be issued, from any vexatious or malicious motive whatever.

Sworn, etc.

A. B.

27. AFFIDAVIT FOR ATTACHMENT AGAINST AN ABSCONDING DEBTOR WHERE THE DEBT IS OVER \$100.

(Insert title of Court and style of cause.)

Commence as in the preceding Form (26).

Insert after the words "indebted to me (or the said A. B.)," in the sum of one hundred and dollars (or two hundred dollars) for principal money on a promissory note (or the balance due on a promissory note) made by the said C. D., whereby he promised to pay to me (or the said A. B.) or bearer the sum of \$ at a day now past. (If the note is payable to order, substitute for the foregoing words "or bearer," the words "or order") which note was duly transferred (or endorsed) to me (or the said A. B.) and is now due and unpaid.

[If the debt is a money demand other than a promissory note, state it according to the fact, as in Form (26)], but add that the amount of the said debt (or money demand) or the original amount, or the balance due thereon does not exceed \$200 for principal money and has been ascertained by the signature of the said C. D. (or of B. K., the person whom as executor (or administrator) the said C. D. represents). [Conclude as in the 2nd and 3rd paragraphs of the next preceding Form.]

(See section 70).

28. AFFIDAVIT OF SERVICE OF SUMMONS.

(Commence as in Form 22).

I, Lachlin Weir, bailiff of the First Division Court of the county of Oxford (or of the said Court, or of the Third Division Court of the county of Kent) make oath and say, that I did, on the day of 18 , duly serve the above named defendant with a true copy of the summons, notices and warnings therein and endorsed thereon, and the particulars of

claim therewith in this cause, by delivering the same personally to the said defendant, (or defendants,) (or if but one served, "to C. D., one of the said defendants,") (or if the service was not personal, state how and on whom served,) by delivering the same to his wife, or to his servant, or to one Henry Roe, who is a grown person and an inmate of and at the defendant's dwelling house or usual place of abode, trading or dealing (see section 99 of the Act), and that I necessarily travelled _____ miles to make such service.

The service may be otherwise than personal where the amount claimed does not exceed \$15, or the Judge so orders it, or in case of attachment.

The service must be personal where the amount claimed exceeds \$15.

Sworn, etc.

V——— W———

Bailiff.

(Or, this form may be used when the affidavit is endorsed on the summons).

I swear that this summons and claim therewith were served by me on the _____ day of _____ by delivering a true copy of both, personally, to the defendant, (or to the wife or servant of the defendant, or to Henry Roe, a grown up person being an inmate of, and at the defendant's dwelling-house, or usual place of abode, trading or dealing), and that I necessarily travelled _____ miles to do so.

Sworn, etc.

V——— W———

Bailiff.

N.B.—This affidavit must not be prepared in a perfunctory way. In all cases it must be prepared by the Clerk and with care, as to its correctness and amply complying with the statute in every respect.

29. AFFIDAVIT OF SERVICE OF SUMMONS ON AN ABSCONDING DEBTOR BY LEAVING COPY, ETC., WITH PERSON DWELLING AT HIS LAST PLACE OF ABODE.

(Commence as in Form 22).

1. That I did on the _____ day of _____ A.D. 18____, serve (naming him) the above-named defendant in this cause with the

within (or "annexed") summons, notices and warnings therein, and the particulars of claim therewith in this cause, by delivering a true copy of each to and leaving them with (naming the person), at the last place of abode in this Province, of the above-named defendant, and that at the time of such service the said (naming the person to whom papers delivered) was dwelling at the defendant's said last place of abode, and that I necessarily travelled miles to make such service.

Sworn, etc.

30. AFFIDAVIT OF SERVICE OF SUMMONS ON AN AB-
SCONDING DEBTOR BY LEAVING COPY, ETC., AT
LAST PLACE OF ABODE OR DWELLING
OF DEBTOR, NO PERSON BEING
THERE FOUND.

(Commence as in Form 22).

1. That I did on the day of A.D. 18 ,
serve (naming him) the above named defendant in this cause
with the within (or "annexed") Summons, Notices and Warn-
ings therein, and the particulars of claim therewith in this
cause,* by leaving a true copy of each at the last place of abode
and dwelling of the defendant in this Province, and that at the
time of so leaving them there, no person could be there found
and that I necessarily travelled miles to make such
service.

Sworn, etc.

31. AFFIDAVIT OF SERVICE OF SUMMONS ON AN AB-
SCONDING DEBTOR BY LEAVING COPY, ETC., AT
HIS LAST PLACE OF TRADE OR DEALING.

(Commence as in last Form down to asterisk* and proceed).

By delivering a true copy of each to and leaving them with
(naming the person) at the last place of trade and dealing of the
above-named defendant in this Province, and that at the time of
such service the said (naming the person served) was dwelling
at the defendant's said last place of trade and dealing, and that
I necessarily travelled miles to make such service.

Sworn, etc.

32. AFFIDAVIT OF EXECUTION OF CONFESSION.

(Commence as in Form 22).

I, _____ Clerk (or bailiff) of the _____ Division Court in the county of _____ (or of the said Court) make oath and say, that I saw the above (or annexed confession) duly executed by the defendant, and that I am a subscribing witness thereto and that I have not received, and that I will not receive anything from the plaintiff or defendant, or any other person, except my lawful fees, for taking such confession, and that I have no interest in the demand, sought to be recovered in this action.

X. Y. (or V. W.)

Sworn before me, etc.

33. AFFIDAVIT FOR JUDGMENT SUMMONS, UNDER THE PROVISIO CONTAINED IN SECTION 235.

(Title of Court and style of cause).

I, _____, of the _____ of _____, in the County of _____ and Province of Ontario, _____, make oath and say:

1. That I am the above-named plaintiff (or "the solicitor or agent" for the above-named plaintiff (as the case may be) in this cause.

2. That judgment was recovered in this cause on the _____ day of _____, in the year of our Lord, 189____, for the sum of _____ dollars, debt (or "damages" or "costs," as the case may be), and the sum of _____ dollars for costs of suit, and that the whole (or _____ dollars, "part") of the said judgment remains unsatisfied.

3. That I believe C. D., the defendant, sought to be examined herein, is able to pay the amount due in respect of the said judgment, or some part thereof (or "that C. D., the defendant, sought to be examined herein, has rendered himself liable to be committed to gaol under the Division Courts Act.")

Sworn, etc.

A. B.

34. AFFIDAVIT AGAINST A JUDGMENT DEBTOR UNDER SECTION 239.

(Insert title of Court and style of cause).

I, A. B., of in the County of merchant, make oath and say as follows:—

1. That I am the plaintiff (or the solicitor or agent of the plaintiff) in this cause, and have a personal knowledge of the facts hereinafter set forth.

2. That the plaintiff recovered judgment against the defendant in this cause on the day of A.D. 18 , for the sum of dollars, and cents, which is still wholly (or partly) due and unpaid (state how much).

3. That the defendant was summoned and examined as a judgment debtor on the day of A.D. 18 , upon the application and at the suit of being a creditor of the said defendant, (or if of this plaintiff then state it) and after his said examination was discharged by the Judge.

4. That the defendant resides in the County of

5. That the following facts which were not then before the Court, upon the said examination, have since come to my knowledge (here state the facts).

6. That the said defendant did not at the said examination make a full disclosure of the estate, effects and debts because (here state in what respect the defendant did not make such disclosure) and the reasons for making this statement are (here fully state the reasons of the deponent for making the allegation).

Or, instead of the foregoing paragraphs, Nos. 5 and 6, state:

That since the said examination the said defendant hath acquired the means of paying the said judgment or some part thereof (here state what the means were, and how the deponent is aware of the facts stated as to the defendant having acquired such means).

Sworn, etc.

A. B.

35. AFFIDAVIT OF EXECUTION OF ANY INSTRUMENT.

(Title of Court and style of cause).

I, O. P., of the, etc., make oath and say that on the day of A. D. 18 , I was present and saw G. H. and K. L. (as the case may be) duly sign and execute the annexed award (or bond or other instrument).

That I know the said persons who so signed and executed the said and I am a subscribing witness to the execution of the same by them respectively.

Sworn, etc.

36. AFFIDAVIT FOR REVIVAL OF JUDGMENT.

(Title of Court and style of cause).

I, A. B. of the of , in the County of , yeoman, make oath and say as follows:—

1. On the day of A. D. 18 , I recovered a judgment of this Court against the above-named defendant for \$ debt (or damages), and \$ costs of suit.

2. No part of said moneys so recovered has been paid or satisfied, and the said judgment remains in full force (or, the sum of part only of said moneys has been paid, and the judgment remains in full force as to the residue of the said moneys so recovered thereby).

3. I am entitled to have execution of the said judgment and to issue execution thereupon for the sum of \$, as I verily believe.

Sworn, etc.

Memo.—If the affidavit be made by the plaintiff's attorney or agent, make the necessary alterations in the above form and add—

4. I am the duly authorized attorney (or agent) of the plaintiff in this matter, and have a personal knowledge of the facts herein set forth.

Sworn, etc.

A. B.

37. AFFIDAVIT ON APPLICATION OF EXECUTOR OR ADMINISTRATOR TO REVIVE A JUDGMENT.

(Insert title of Court and style of cause).

I, Aaron Barr, of, etc., make oath and say as follows:—

1. On the day of A. D. 18 , the plaintiff, now deceased, recovered a judgment of this Court against the defendant above-named for \$ debt, and \$ costs of suit.

2. That no part of the said judgment so recovered has been paid or satisfied, and the said judgment remains in full force (or the sum of \$ part only of the said moneys, has been paid, and the said judgment remains in full force for the residue).

3. That I was (or Charles Fox, of the Town of in the County of yeoman, was on the day of 18 , duly appointed the executor (or administrator) of the property of the said deceased plaintiff.

4. That I am, as such executor (or administrator), entitled (or the said Charles Fox as such executor or administrator is entitled) to have execution of the said judgment and to have execution issued thereupon, as I verily believe, for the sum of \$.

Sworn, etc.

A. B.

38. AFFIDAVIT FOR REVIVAL OF JUDGMENT AGAINST AN EXECUTOR OR ADMINISTRATOR.

(Insert title of Court and style of cause).

I, Aaron Barr, of the Town of St. Mary's, in the County of Perth, yeoman (if the affidavit be made by the plaintiff's solicitor or agent make the necessary alteration), make oath and say as follows:—

1. On the day of , A. D. 18 , I recovered a judgment of this Court against the above-named George Raymond, since deceased, for \$ debt, and \$ costs of suit.

2. No part of said moneys so recovered has been paid or satisfied, and the said judgment remains in full force (or "th-

sum of , part only of the said moneys has been paid, and the judgment remains in full force as to the residue of the said moneys so recovered thereby.")

3. That William Bush, of the Township of Woodhouse, in the County of Norfolk, yeoman, was duly appointed the executor (or administrator) of the property of the deceased.

4. I (or "the said plaintiff") am entitled to have execution of the said judgment, and to issue execution thereupon for the sum of \$ as I verily believe.

Sworn, etc.

A. B.

39. AFFIDAVIT UNDER SECTION 217 (AS AMENDED BY SECTION 24, DIVISION COURTS ACT, 1889) FOR FURTHER PROCEEDINGS WITHOUT A JUDGE'S ORDER AFTER TRANSCRIPT TO FOREIGN COURT.

(Title of Court and style of cause).

(Commence as in other affidavits).

1. That the judgment rendered in this cause remains unsatisfied in whole (or in part, as the case may be, shewing how much remains unpaid).

2. That an execution issued out of the Division Court of the County of to which a transcript was issued from this Court, has been returned nulla bona [or that I believe the defendant has not sufficient goods in that division to satisfy the said judgment].

(Jurat and conclusion as in other affidavits).

40. AFFIDAVIT OF DISBURSEMENTS TO SEVERAL WITNESSES.

No. 18 .

(Title of Court or style of cause).

I, C. D., of make oath and say:—

1. That I am the above-named defendant in this cause, and

I, A. B., of the above plaintiff (or C. D., the above defendant, or E. F., agent or solicitor for the above plaintiff or defendant) make oath and say:—

1. That the several persons whose names are mentioned in the first column of the schedule at the foot hereof were necessary and material witnesses on my behalf (or on behalf of the said plaintiff or defendant) and it ended at the sittings of this Court on the day of as witnesses on my behalf (or on behalf of the said defendant or plaintiff) and that they did not attend as witnesses in any other cause; (if otherwise state the facts).

2. That each of the said witnesses necessarily travelled in going to said Court and attending the said trial the number of miles, respectively, mentioned in figures in the second column of the said schedule opposite to the names of each of the said witnesses, respectively.

3. That each of the said witnesses was necessarily absent from his (or her) home in order so to attend the said trial the number of days set forth in the third column of the said schedule opposite the names of them respectively.

4. That the several and respective sums of money mentioned in figures in the third column of the said schedule, opposite to the names of the said witnesses, respectively, have been paid by me (or by the plaintiff or defendant) to the said witnesses, respectively, as in the said schedule set forth for their attendance and travel as witnesses in this cause. (Conclude with jurat as in other affidavits).

A. B.

SCHEDULE REFERRED TO IN THE FOREGOING AFFIDAVIT.

Names of Witnesses.	Miles.	Absent from home.	Sums paid.
1	2	3	4

Note.—Where the party seeks to be allowed his own expenses for attendance, he must swear both that he was a necessary and material witness on his own behalf, and that he would not have attended the Court except for the purpose of giving evidence in the case.

41. FORMS OF OATHS, ETC.

(a) To a witness at the trial who swears upon the Bible:

"The evidence you shall give to the Court (and jury sworn) touching the matters in question between the parties, shall be

the truth, the whole truth and nothing but the truth. So help you God."

(b) To a witness who swears with uplifted hand:

Add to the foregoing after the last word "truth," and this you do swear in the presence of the everliving God, and as you shall answer to God at the great judgment day. So help you God."

(c) To a Jew: He is to be directed to cover his head, the Pentateuch is to be opened and placed before him, then proceed as in the first form, only make use of the name "Jehovah" instead of "God."

(d) To a Quaker, Menonist or Tunker, or member of the church known as the Unitas Fratrum or United Brethren or other person allowed by law to affirm:

The witness is to be directed to repeat his name, after the clerk, and the following: "I, K. L., do solemnly, sincerely and truly declare and affirm that I am one of the society called Quakers," (or Menonists, Tunkers or Unitas Fratrum or Moravians, as the case may be), after which, the affirmant repeating his name, I, K. L., do solemnly, sincerely and truly affirm and declare that the evidence I shall give to this Court touching the matters in question, etc."

(e) To a person referred to in R. S. O. (1887), cap. 61, sec. 13:

I, M. N., do solemnly, sincerely and truly affirm and declare that the taking of an oath is, according to my religious belief, unlawful; and I do also solemnly, sincerely and truly affirm and declare, etc. (as in Form d) above.

(f) To an interpreter (where witnesses cannot speak English, or are deaf and dumb, or dumb).

"You shall truly interpret between the Court (the jury), the parties in this cause, and the witnesses produced. So help you God."

(g) To jury called by parties:

"You and each of you shall well and truly try the matters in difference between the parties, do justice between them according to the best of your skill and ability, and a true verdict give according to the evidence. So help you God."

(h) To jury called by the Judge:

"You and each of you shall well and truly try the facts controverted in this cause between the parties, and a true verdict give according to the evidence. So help you God."

(i) To a defendant who appears upon a judgment summons:

"You shall true answers make to all such questions as shall be put to you touching the subject, upon which you have been now summoned to appear for examination, and what you shall state respecting the same shall be the truth, the whole truth and nothing but the truth. So help you God."

(j) To the officer who conducts a retiring juror out of Court:

"You shall retire with such jurors as have leave of absence from this Court, you shall not speak to them yourself, in relation to the subject of this trial, nor suffer any person to speak to them, and you shall return with them without unnecessary delay. So help you God."

(k) To the officer when the jury retire to consider their verdict:

"You shall keep every person sworn on this jury in some private and convenient place without meat or drink; you shall not suffer any person to speak to them, or speak to them yourself, except to ask them whether they have agreed on their verdict. So help you God."

(l) To a deponent or affirmant making an affidavit or affirmation:

"You do swear (or affirm) that the contents of this affidavit (or affirmation) to which you have subscribed your name (or made your mark) are just and true. So help you God." (Or "and so you solemnly, sincerely and truly declare and affirm.")

(m) OATH TO BE ADMINISTERED TO WITNESS BY ARBITRATOR OR UMPIRE.

The evidence which you shall give before me as arbitrator (or umpire) touching the matters in difference, shall be the truth, the whole truth, and nothing but the truth. So help you God.

(n) JURAT TO AFFIDAVIT BY ILLITERATE OR BLIND DEPONENT.

Sworn by the above-named deponent, A. B., at _____, in the county of _____, on _____, and I certify that the affidavit

was first read in my presence to said A. B., who seemed perfectly to understand the same, and wrote his signature (or made his mark) thereto in my presence.

X. Y., Clerk, etc.

Or as the case may be.

(*o*) AFFIRMATION BY QUAKERS, ETC., AND JURAT THERETO.

(Insert title of Court and style of cause).

I, A. B., of _____, etc., do solemnly, sincerely and truly declare and affirm that I am one of the society called Quakers (or Menonists, Tunkers, Unitas Fratrum or Moravians, as the case may be), and I do solemnly, sincerely and truly declare and affirm as follows, that is to say (state the facts).

Solemnly affirmed at	)	
in the county of	)	A. B.
on _____, before me.	)	

X. Y., Clerk, etc.,

Or as the case may be.

42. AFFIDAVIT ON APPLICATION TO CHANGE THE VENUE.

(Insert title of Court and style of cause).

I, C. D., of _____, make oath and say:—

1. That I am the above named defendant in this cause, and was served with the summons herein on the _____ day of _____ instant (or last past).

1. That I intend to defend this suit; that I have a good defence to this action upon the merits; that the cause of action herein did not wholly arise in the division in which this action is brought, and that the witnesses for the defence (or some of the witnesses for the defence) reside within the division in which I resided (or carried on business, or resided and carried on business, as the case may be) at the time this action was brought, namely: (here set out the names and residences of such witnesses) and that the application to be made herein is not to be so made for the purpose of delay.

3. That at the time this action was so brought I resided (or carried on business, or resided and carried on business, as the case may be) within the limits of the Division Court for the County of , and that the next two sittings of the said last mentioned Court will be held on the (there give the dates particularly and if possible the hour of opening of the Court) and that I desire to have this cause transferred to that Court, and tried at one of such sittings.

Sworn, etc.

C. D.

[Should the affidavit be made by one of several defendants, or by a solicitor or agent, it can be easily adapted.]

GARNISHEES.

43. AFFIDAVIT FOR ORDER TO GARNISH DEBT.

(Insert title of Court and style of cause).

I, A—— B——, of the of in the county of the plaintiff in this suit (if the affidavit be made by the plaintiff's solicitor or agent make the necessary alteration), make oath and say that judgment was recovered in the cause against the above-named defendant on the day of A.D. 18 , for the sum of \$ debt and costs (or according to the judgment, in case the judgment has been transferred to another Court, here state the fact.) That the said judgment remains wholly unsatisfied (or that \$, part thereof, yet remains unsatisfied).

That I have reason to believe, and do believe, that E. F., who is residing at , within this Province, is (or if the person indebted to the defendant be not known say "that one or more persons who are residing within this Province, whom I am unable to name, are") indebted to the defendant in the sum of \$ (or if the amount be unknown say "in an amount which I am unable to name.")

Sworn before me at the of }
in the county of this } A—— B——
day of A.D. 18 }

44. GENERAL FORM OF HEADING AND CONCLUSION OF AFFIDAVITS IN GARNISHEE PROCEEDINGS.

In the Fifth Division Court of the county of Brant.

Between A. B., Primary Creditor,

and

C. D., Primary Debtor,

and

E. F., Garnishee.

I, G. H., of , make oath and say: -

[Signature.]

Sworn at in the
county of , this
day of one thousand -
eight hundred and
before me.)

SUMMONSES AND WARRANTS.

45. GENERAL FORM OF ALL SUMMONSES, SUBPÆNAS, WARRANTS, EXECUTIONS, AND OTHER PROCESS. UNDER THE SEAL OF THE COURT.

No. , A.D. 18 .

In the First Division Court in the County of York,

Between John Doe, Plaintiff

[Seal.]

and

Benjamin Franklin, Defendant.

To

Given under the seal of the Court this Tenth Day of June,
A.D. 18 .

R. ROE, Clerk

46. In garnishee notices and proceedings, admissions, orders and warrants, etc., change the foregoing (Form 45) as follows
No. , A.D. 189 .

In the First Division Court in the County of Brant.

Between Aaron Burr, Primary Creditor

[Seal.]

and

Charles Dyke, Primary Debtor.

and

Eli Forbes, Garnishee.

(NOTE.—If another party added, insert "Geoffrey Roberts on Claimant, added as a party.")

Dated this day of , 18 .

Clerk.

(Or person sending notice or making admission or signing order.)

To

(The person to whom notice is sent.)

47. SPECIAL SUMMONS.

No. A.D. 18 .

In the Division Court in the County of

[Seal.]

Between Henry Bray, Plaintiff,

and

John Nokes, Defendant.

To the above-named defendant:—

Take notice that the above-named plaintiff claims from you dollars, as shown by his particulars of claim herewith. If the amount of the claim with lawful costs be paid to the Clerk of this Court within days from the service hereof upon you, no further proceedings will be taken.

Unless within days after the service of this summons on you you enter with the clerk of this Court a notice in writing that you intend to dispute this claim, the clerk may enter judgment at his office and issue execution against you.

In case you give such notice disputing the claim, the cause will be tried at the sitting of this Court to be held at in the said County of next after the expiration of days from the time this summons is served on you, and the sittings of the Court are set forth below.

Given under the seal of the Court this day of A.D. 18 .

RICHARD ROE,

Clerk.

Claim \$
Costs, exclusive of mileage . \$

NOTICES AND WARNINGS TO THE DEFENDANT.

No. 1. If the defendant disputes the plaintiff's claim, or any part of it, he must leave with the clerk within days after the day of the service hereof, a notice to the effect that he disputes the claim, or if not the whole claim, how much he disputes, in default whereof final judgment may be signed for the whole claim, or such part as is not disputed at any time within one month after the return of the summons, without prejudice to the plaintiff's right to recover for the remainder of the claim.

No. 2. If the defendant desires to set-off any demand or counter-claim against the plaintiff at the trial or hearing of this cause, or to take the benefit of any statute of limitations or other statute, notice thereof in writing, together with particulars of the set-off or counter-claim, must be left with the clerk of the Court and served on the plaintiff, or left at his usual place of abode, if he is living within the division, not less than five days before the day on which the cause will be tried, and in case the plaintiff does not reside within the division such notice and particulars must be left with the clerk for him.

No. 3. In cases of tort or replevin where the sum or value of the goods or damages sought to be recovered exceeds \$20 and in all other cases, where the amount sought to be recovered exceeds \$30, the defendant may have the action tried by a jury by giving notice in writing at the clerk's office five days after service of this summons on him, and on payment of fees for summoning the jury.

No. 5. Summonses for witnesses and for the production of documents may be obtained at the office of the clerk upon payment of the proper fee.

(Here may be inserted the time of one or more subsequent sittings specifying the hour of the day of the week and month, plainly written in words at full length, and not expressed by figures or contractions of words.)

Endorse notice under section 98 (Form No. 48).

To the within-named defendant:

49. ORDINARY SUMMONS.

[Seal.]

To the above named defendant:—

Take notice that the above-named plaintiff claims from you dollars, as shown by his Statement of Claim herewith.

Unless within days after the service of this summons on you, you enter with the Clerk of the Court a notice in writing that you intend to dispute the claim it will be considered that you have no defence, and the said plaintiff may, at the sitting of this Court next after the expiration of days from the time this summons is served on you, proceed to prove the amount of his claim against you, in your presence or absence. In case you give such notice disputing the claim, the cause will be tried at the sitting of this Court to be held at , in the said County of , next after the expiration of days from the time this summons is served on you, and the sittings of the Court are set forth below.

Given under the seal of the Court this day of A.D.
18 .

RICHARD ROE,
Clerk.

Claim \$

Costs, exclusive of mileage.. \$

Add notices and warnings as in form for special summons (No. 47) except No. 1.

Endorse notice under section 98 (Form No. 48).

50. In case of an action against an executor or administrator where it is intended to charge him with a devastavit add the following suggestion:

(Commence with form of Summons, as in "Ordinary Summons" but naming defendant as executor or administrator, and adding after the words "against you" in the above) and the plaintiff alleges, that you, the defendant, have money, goods, and chattels, which were the property of the said C. D., deceased, at the time of his death, and which came to your hands as such executor (or administrator) to be administered; and if not, that you have withheld or wasted the same.

51. MEMORANDUM TO BE PUT ON ALL OTHER SUMMONSES.

On the day of trial the defendant must bring all the books and papers necessary to prove his case, or in any way connected with it or with his transactions with the plaintiff.

In cases of tort or replevin where the sum or value of the goods or damages sought to be recovered, exceeds \$20.00, and in all other cases where the amount sought to be recovered exceeds \$30.00, and in all cases of interpleader the defendant may have the action tried by a jury by giving notice in writing at the Clerk's office five days after service of this summons on him, and on payment of fees for the expenses of the jury.

Summonses for witnesses and for the production of documents may be obtained at the office upon payment of the proper fee.

52. WARNING TO BE ADDED TO THE PARTICULARS OR
THE WARNINGS ON THE SUMMONS WHERE SUIT
BROUGHT UNDER SECTION 239.

"The defendant is informed and cautioned that I
K—— (insert the name of the beneficial plaintiff) only has
power to discharge this suit, the subject matter thereof having
been seized under execution."

53. SUMMONS TO EXECUTOR OR ADMINISTRATOR, WHERE
PLAINTIFF INTENDS TO APPLY TO THE COURT,
ALLEGING THAT ASSETS HAVE COME TO
THE DEFENDANT'S HANDS SINCE
JUDGMENT.

In the Division Court in the County of
Between A——— B———, Plaintiff.

[Seal.]

and

No. , A.D. 18

C——— D———, Executor (or adminis-
trator) of E. F., de-
ceased, Defendant

The plaintiff having learned that property of the said de-
ceased has come to your hands as executor (or administrator)
since the judgment herein, to be administered and that you
have withheld and wasted the same, intends to apply at the
sitting of this Court, to be held at in the said

county of _____ next, after the expiration of _____ days from the time this summons is served on you for an order that the debt and costs be levied of the goods and chattels of the said deceased, if you have so much thereof to be administered, and that if you have not, then that it shall be levied of your own proper goods and chattels, and that the costs be levied of your proper goods and chattels.

You are, therefore, hereby summoned to appear at the said Court, to answer touching the matter aforesaid. The sittings of the Court are set forth below.

Given under the seal of the Court this _____ day of _____, 18 ____.

To

The above-named defendant.

Add warnings and notices as in the ordinary summons.

Add dates of sittings of Court.

And endorse notice under section 98.

54. SUMMONS TO DEFENDANT AFTER JUDGMENT.

In the _____ Division Court in the County of _____
No. _____, A.D. 18 ____.

	Between	A. B.	Plaintiff,
[Seal.]		and	
		C. D.	Defendant.

To the above-named defendant.

Whereas on the _____ day of _____, A.D. 18 __, the plaintiff duly recovered judgment against you in said Court for \$ _____ for debt, and \$ _____ for costs of suit, which remains unsatisfied, you are therefore hereby summoned to appear at the next sittings of this Court, to be held at _____, in the said county _____, on the _____ day of _____ A.D. 18 __, at the hour of _____ o'clock in the _____ noon, to be then and there examined touching your estate and effects, and the manner and circumstances under which you contracted the said debt (or incurred the damages or liability) which was the subject of the action in which the said judgment was obtained against you, and as to the means and expectations you then had, and as to the property and means you still have, of dis-

charging the said debt (or damages or liability), and as to the disposal you may have made of any of your property. And take notice, that if you do not appear in obedience to this summons you may, by order of this Court, be committed to the common gaol of the county.

Given under the seal of the Court this day of
18 .

By the Court.

X—— Y——, Clerk.

Amount of judgment\$

Costs of this summons...\$

55. JUDGMENT SUMMONS AFTER DEFAULT.

In the Division Court in the County of
[Seal.] Between A. B. , Plaintiff,
No. A.D. 18 . and
[Stamp.] C. D. , Defendant.

Whereas at the sittings of the Court (or of, etc.), holden at the in the town of of , in the county of , on the day of 18 . the above-named plaintiff obtained a judgment against you for the sum of \$ for debt, besides interest thereon, and \$ costs to be paid , and which said judgment remained unsatisfied.

And whereas by a summons bearing date the day of , 18 , you were summoned to appear at the sittings of this Court, holden at the of , in the county of , on the day of 18 , at the hour of of the clock in the forenoon, to be then and there examined by the Judge of the said Court touching your estate and effects, and the manner and circumstances under which you contracted the said debt, which was the subject of the action in which the said judgment was obtained against you, and as to the means and expectations you then (at the time of contracting) had, and as to the property and means you still had (at the said last day aforesaid) of discharging the said debt, and as to the disposal you may have made of any of your property.

And whereas upon your appearing thereto, and upon examination and hearing of both parties (or of you, and the evidence.

If any), it appeared to the satisfaction of the said Judge, that you then had (or had since the judgment obtained against you (as the case may be), sufficient means and ability to pay the said debt and the interest thereon and costs so recovered against you: and the said Judge did then and there order and direct that you should pay to the said plaintiff the sum of \$ debt, and interest then accrued, and \$ costs, and also \$ costs of the said last mentioned summons, to be paid as follows, that is to say, the sum of \$ to be paid on the day of , 18 , the further sum of \$ to be paid on the day of , 18 , or forthwith (as the case may be).

And whereas the plaintiff alleges that you have not paid the and instalments of each, (or the said sums) so ordered to be paid.

You are therefore hereby summoned to appear at the next sittings of this Court, to be holden at the in the town of in the county of , on the day of 18 , at the hour of of the clock in the forenoon, to be then and there examined by the Judge of the said Court touching your estate and effects, and the manner and circumstances under which you contracted the said debt, which was the subject of the action in which the said judgment was obtained against you, and as to the means and expectations you then had, and as to the property and means you still have, of discharging the said debt, and as to the disposal you have made of any of your property, and as to the reasons why you have not paid to the plaintiff the said and instalments of each, of the said debt, so ordered to be paid by you, as last above mentioned and recited, pursuant to the said order of the Judge.

And also to show cause why you should not be committed to the common jail of the county for not complying with the said order of the said Judge.

Given under the seal of the Court this day of 18 .

By the Court,

X— Y—

Clerk.

Amount of judgment\$

Amount of instalment.....

Cost of this summons.....

56. SUMMONS AT INSTANCE OF CLERK FOR PAYMENT OF FEES UNDER SECTION 55.

(Insert title of Court and style of cause; if more causes, than one, state the others).

[Seal.]

To the above-named plaintiff (or to X G):

The clerk of this Court demands of you the sum of \$ for the fees and costs of this suit, and you are hereby summoned to be and appear at the next sitting of this Court to be holden at (as the case may be) in the said county of , on Monday, the day of , A.D. 18 , at the hour of 10 o'clock in the forenoon, then and there to show cause why you should not be ordered by the Judge to pay the said fees and costs, a statement of which is herewith annexed; and which, according to the provision of the 54th section of The Division Courts Act, were payable in the first instance by you, but which you did not pay.

In the event of your not so appearing and showing cause why you should not pay the same forthwith, or of your not paying the same, an order of the Judge will be obtained and issued against you, under the 55th section of the Act, directing you to pay the same to the clerk, which will be followed and enforced by execution against your goods and chattels, or by such other ways and means as any debt or damages ordered by the Court to be paid can be recovered. If you pay the same before the sittings of the Court, no further costs will be incurred than the costs of this summons and the bailiff's fees for service hereof and mileage.

(Conclude as in other summonses).

Judge.

57. SUMMONS TO JURORS.

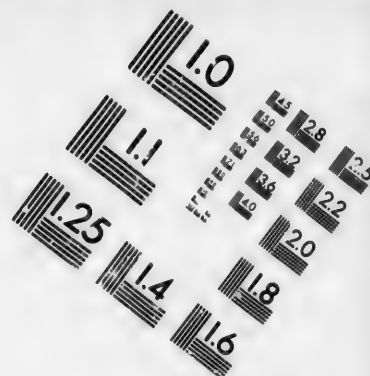
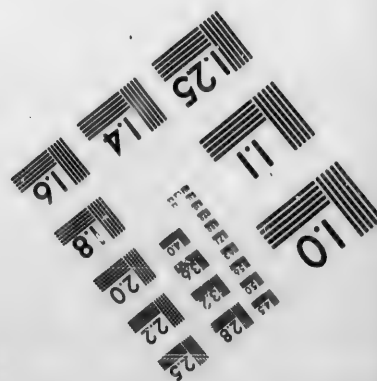
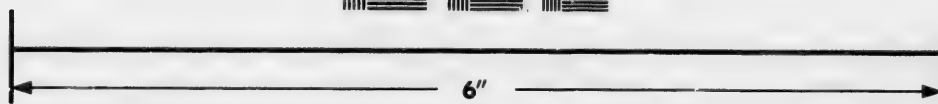
[Seal.]

In the Division Court in the County of

You are hereby summoned to appear and serve as a juror in this Court, to be holden at on the day

D.C.A. 24



[illegible]

**23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503**

18
20
22
25
28
32
36
40

10
11

of _____, A.D. 18____, at the hour of _____ a.m.; herein fail
not at your peril.

Given under the seal of the Court this _____ day
of _____, 18____.

To _____
X. Y.,
Clerk.

58. SUMMONS TO WITNESS.

(Insert title of Court and style of cause).

[Seal.]

You are hereby required to attend at the sittings of the said
Court, to be holden at _____ on Tuesday, the 7th day
of July, A.D. 18____, at the hour of _____ in the forenoon, to
give evidence in the above cause, on behalf of the above-
named _____ [and then and there to have and produce

Given under the seal of the Court this _____ day
(state particular documents required) and all other papers relating
to the said action in your custody, possession or power.]
of _____ 18____.

To _____
X. Y.,
Clerk.

59. SUMMONS TO WITNESS TO APPEAR BEFORE
ARBITRATOR.

(Insert title of Court and style of cause.)

[Seal.]

You are hereby required to attend before _____ the
Arbitrator (or Arbitrators) to whom this cause stands referred,
at _____ on the _____ day of _____ A.D.
18____, at _____ o'clock _____ of that day, being the
time and place appointed by the said arbitrator for a meeting
upon the said reference, to give evidence in the above cause on
behalf of the above-named _____ [and then and there to
have and produce (state the particular documents required) and
all other papers relating to the said action in your custody,
possession or power.]

Given under the seal of the Court this _____ day of _____ A.D.
18____.

To _____
X. Y.,
Clerk.

60. ATTACHMENT AGAINST AN ABSCONDING OR REMOVING DEBTOR.

To A. B., bailiff of the Division Court in the county of (or to A. B., a constable of the county of , as the case may be.)

You are hereby commanded to attach, seize, take and safely keep, all the personal estate and effects of C. D. (naming the debtor), an absconding, removing or concealed debtor, of what nature or kind soever, liable to seizure under execution for a debt within the county of (here name the county), or a sufficient portion thereof to secure A. B. (here name the creditor) for the sum of (here state the amount sworn to be due), together with the costs of his suit thereupon, and to return this warrant, together with an inventory and appraisement of such property as you shall have attached, to the clerk of the (here state the number of the division) Division Court in the county aforesaid forthwith; and herein fail not.

Witness my hand and seal (or the seal of the said Court) the day of , one thousand eight hundred and .

[Seal.]

X—— Y——,

Clerk (or Justice of the Peace, as the case may be.)

REPLEVIN.

61. AFFIDAVIT TO OBTAIN JUDGE'S ORDER FOR WRIT OF REPLEVIN.

In the Division Court, in the county of .
County of , I, A. B., of , make oath and say:
To wit:

1. That I am the owner of (describe property fully) at present in the possession of C. D.; or that I am entitled to the immediate possession of (describe property) as lessee, (bailiff or agent) of E. F., the owner thereof (or as trustee for E. F.), (or as the case may be) at present in the possession of C. D.

2. That the said goods, chattels and personal property are of the value of dollars, and not exceeding sixty dollars.

3. That on or about the day of , the said goods, chattels and personal property were lent to the said C. D. for a period which has expired, and that although the said goods, chattels and personal property have been duly demanded from the said C. D., he wrongfully withholds and detains the same from me, the said A. B., or, that on or about the day of , the said C. D. fraudulently obtained possession of the said goods, chattels and personal property by falsely representing that (here state the false representation) and now wrongfully withholds and detains the same from me, or, that the said goods, chattels and personal property were on the day of distrained or taken by the said C. D. under color of a distress for rent, alleged to be due by me to one E. F., when in fact no rent was due by me to the said E. F. (or as the case may be, setting out the facts of the wrongful taking or detention complained of with certainty and precision).

4. That the said C. D. resides (or carries on business) at , within the limits of the Division Court, in the county of , (or that the said goods, chattels and personal property were distrained), (or taken and detained), (or detained) at , within the limits of the Division Court, in the county of .

Sworn, etc.

62. AFFIDAVIT TO OBTAIN WRIT OF REPLEVIN WITHOUT JUDGE'S ORDER, IN THE FIRST INSTANCE.

The first four sections may be as in last form, except that the third section must show that the property was wrongfully taken out of the possession of the claimant, or was fraudulently got out of his possession, and it will not be sufficient to show merely a wrongful detention of the property, and the following must be stated in addition:

5. That the said personal property was wrongfully taken (or fraudulently got) out of my possession within two calendar months before the making of this affidavit, that is to say, on the day of last.

6. I am advised and believe that I am entitled to an order for the writ of replevin now applied for, and I have good reason to apprehend and do apprehend that unless the said writ is issued without waiting for an order, the delay will materially prejudice my just rights in respect to the said property (or if the property was distrained for rent or damage feasant, the statement given in the last specific alternative under the 3rd clause of the above form will be sufficient to obtain the writ without order).

63. CLAIM IN REPLEVIN.

No. , A.D. 18 .

In the Division Court, in the county of .
 A. B., of , states that C. D., of , did on or about the day of , A.D. 18 , take and unjustly detain (or detain, as the case may be), and still doth detain his goods, chattels and personal property, that is to say (here set out the description of property), which the said A. B. alleges to be of the value of dollars, whereon he hath sustained damages, and the said A. B. claims the said property with damages on this behalf, as his just remedy.

A. B.

64. SUMMONS IN REPLEVIN.

No. , A.D. 18 .

In the Division Court in the county of .
 [Seal.]

To Henry McPhall, the bailiff of the said Court, and to John Nokes:

You, the said bailiff, are commanded that without delay you do take the security required by law and cause to be replevied to Henry Bray his goods, chattels and personal property following, that is to say: (here set out the description of the property as in the affidavit filed) which the said Henry Bray alleges to be of the value of \$ (here set out value as in the affidavit filed), in order that the said Henry Bray may have his just remedy in that behalf.

And you, the said John Nokes, are hereby required to take notice that a statement of the claim of the said Henry Bray is hereto annexed, and that unless within days after the service of this summons on you, you enter with the clerk of this Court a notice in writing that you intend to dispute the claim, it will be considered that you have no defence, and the said Henry Bray may either cause judgment to be entered against you by default for \$2 and costs, or may at the sitting of this Court to be held at next, after the expiration of days from the time this summons is served on you, proceed in the same action in the same manner as if you had appeared and had admitted his right to the possession of the goods.

The days of sittings of the Court are set forth below.

Given under the seal of the Court the day of , 18 .

DAVID B. JONES,

Clerk.

Claim for return of goods and damages \$

Costs, exclusive of mileage \$

WARNING.

If you claim a right to the possession of the goods by reason of any claim which you may have to urge under any statute, or to take the benefit of any Statute of Limitations or other statute, notice thereof in writing must, not less than five days before the day on which the case will be tried, be left in the office of the clerk of the Court and given to the said plaintiff, or left at his usual place of abode, if living within the division, and in case the said plaintiff does not reside within the division, such notice shall be left with the clerk for him.

Ensuing sittings of the Court will be held as follows, viz.:

At 10 o'clock a.m.—

Tuesday, the 9th day of January, 18 .

Tuesday, the 6th day of March, 18 .

(Here may be inserted the time of one or more subsequent sittings.)

Add memorandum (Form 51.)

Endorse notice, under section 98 (No. 48).

65. REPLEVIN BOND.

Know all men by these presents that we, Henry Bray, of etc., Robert Leslie, of, etc., and Horace Kilborn, of, etc., are jointly and severally held and bound to Henry McPhall, bailiff of the Division Court in the count of , in the sum of \$, to be paid to the said bailiff or his certain attorney, executors, administrators or assigns, for which payment, to be well and truly made we bind ourselves, and each and every of us in the whole, our and each and every of our heirs, executors and administrators, firmly by these presents, sealed with our seals, and dated this day of , A.D. 18 .

The condition of this obligation is such that if the above bounden Henry Bray do prosecute his suit with effect, and without delay, against John Nokes for the taking and unjustly detaining (or unjustly detaining, as the case may be), of his cattle, goods and chattels, to wit: (here set forth the property distrained, taken or detained), and do make a return of the said property, if a return thereof shall be adjudged, and also do pay such damages as the said John Nokes shall sustain by reason of the issuing of the writ of replevin, if the said Henry Bray fails to recover judgment in the suit (if the goods were not taken under distress for rent or damage feasant, and if the case comes under the provisions of Rule No. , here insert), and shall also indemnify and save harmless the said John Nokes from all loss and damages which he may sustain by reason of the seizure and of any deterioration of the property in the meantime, in the event of its being returned, and all costs, charges and expenses which the said John Nokes may incur), and further do observe, keep and perform all orders made by the Judge in the suit; then this obligation shall be void, or else remain in full force and effect.

Signed, sealed and delivered }
in the presence of }

(L. S.)

(L. S.)

(L. S.)

66. FORM OF ASSIGNMENT TO BE ENDORSED, IF REQUIRED.

Know all men by these presents that I, Henry McPhall, bailiff of the Division Court in the count of , have, at the request of the within-named John Nokes (the de-

fendant) assigned over this replevin bond unto the said John Nokes, pursuant to the rule in such case made and provided.

In witness whereof I have hereunto set my hand and seal
this day of , A.D. 18 .
Signed, sealed and delivered [Seal.]
in the presence of

67. BAILIFF'S RETURN TO WRIT OF REPLEVIN.

In the Division Court in the count of
Between Henry Bray, Plaintiff,
and
John Nokes, Defendant.

In pursuance of the Division Court Rules in that behalf, I have taken from the said plaintiff a bond conditioned as by the said rules required, made by him, and two sureties, namely, Robert Leslie, of the village of Kemptville, in the county of Grenville, and Province of Ontario, Esquire, and Horace Kilborn, of the village of Newboro', in the county of Leeds and Province of Ontario, Esquire, which bond bears date the day of , 18 , and is witnessed by Samuel McCanimon, of the town of Gananoque, in the county of Leeds, Esquire. And by virtue of the annexed writ to me directed, I have seized and delivered to the plaintiff the goods mentioned in said writ, that is to say: (here describe the goods by number, quantity and quality: [or if only a part had been replevied, say, a portion of the goods in the said writ mentioned, that is to say (here describe them), and I cannot make replevin of the residue of said goods, namely (shortly describe them), as by said writ commanded, by reason of the same having been removed or carried out of this county by the defendant (or as the case may be), dated the day of , 189 .

Henry McPhail,
Bailiff.

68. INVENTORY OF GOODS REPLEVIED.

In the Division Court in the count of
Between Henry Bray, Plaintiff,
and
John Nokes, Defendant.

An inventory of property and effects by me this day replevied in the township of Elizabethtown, in the county of Leeds, by virtue of a writ of replevin, issued by David B. Jones, clerk of the Division Court in the count of , on behalf of the plaintiff against the defendant: that is to say (here state all the articles replevied).

Dated the day of , 18 .

69. WRIT IN REPRISAL.

(Capias in Withernam.)

No. , A.D. 18 .

In the Division Court in the count of
Between Henry Bray, Plaintiff,
and
John Nokes, Defendant.

[Seal.]

To Henry McPhall, bailiff of the said Court:—

Upon application of the plaintiff, and it appearing by your return to the writ of replevin issued herein on the _____ day of _____, 18____, that the goods, chattels and personal property (or a portion of the goods, chattels and personal property, as the case may be) mentioned in the said writ had been removed or carried (eloigned) by the defendant out of this county so that you could not make replevin of the same.

You are now hereby commanded that without delay you do take in withernam (in reprisal) the goods, chattels and personal property of the said defendant in this county, to the value of the goods, chattels and personal property by the said defendant before taken and do forthwith deliver them to the said plaintiff

to be kept by him until the said defendant delivers the goods, chattels and personal property last aforesaid to the said plaintiff.

And you are hereby further commanded that if the said plaintiff shall give security to you as provided by law for the prosecution of the plaintiff's claims and for the return of the goods, chattels and property so to be taken in withernam as aforesaid, if the return thereof shall be adjudged, then that you, the said bailiff, do take security with two sufficient sureties from the said defendant to answer to the said plaintiff for the taking and unjustly detaining of his goods, chattels and personal property aforesaid.

And you are hereby further commanded forthwith to make return to the clerk of this Court what you shall have done in the premises and do also return this writ.

Given under the seal of the Court the day of , 18 .

DAVID B. JONES,

Clerk.

GARNISHEES.

70. SUMMONS TO GARNISHEE AND PRIMARY DEBTOR
AFTER JUDGMENT.

[Seal.] In Division Court, in the county of .

No. , A.D. 18 .

Between Abraham Berner, Primary Creditor,

and

Charles Deolittle, Primary Debtor,

and

Emery Wheeler, Garnishee.

Judgment recovered on the day of A.D. 18 , in the
Division Court in the county of . Amount unsatis-
fied, \$.

You, the above-named garnishee, and the primary debtor, are hereby summoned to appear at the sittings of this Court, to be held at in the said county, next after the expiration of days from the time this summons is served on you, to state and to show whether or not you, the said garnishee, owe

any, and what debt to the above-named primary debtor, and why you should not pay the same into Court, to the extent due on the above-named judgment, to satisfy the same;

And you, the said garnishee, are hereby notified that from and after the time of the service of this summons on you all debts due or accruing due from you to the above-named (C. D.), are attached, and if you pay the same to any one other than to the person holding the proper order to receive the same, or into Court, you will be liable to repay it, in case the Court or Judge so order.

And you, the said primary debtor, and garnishee, are hereby, severally, required to take notice that if any or either of you desires to set up any statutory or other defence or any set-off, or to admit any liability of any or either of you, in whole or in part, for the amount claimed in this action, you must file with the clerk of this Court the particulars of such defence or set-off, or an admission of the amount due or owing by any or either of you (as the case may be), within eight days after service on you respectively of this summons. In the absence of any notice of such defence or set-off the Judge may, in his discretion, give judgment against you, or either of you.

You, or any one interested, may also show any other cause why the said debt should not go to satisfy the said judgment.

The sittings of the Court are set forth below.

Given, etc. (close as in Form 47.)

NOTICES AND WARNING TO GARNISHEE AND PRIMARY DEBTOR.

No. 1. The primary debtor, the garnishee, and all other parties in any way interested or to be affected by this proceeding, are entitled to set up any defence, set-off, or counter-claim, as between the primary creditor and the primary debtor, which the latter would be entitled to set up in an ordinary action, and also any defence, set-off, or counter-claim as between the garnishee and the primary debtor,—and may also show any other just cause why the debt sought to be garnished should not be paid over or applied in or towards satisfaction of the claim of the primary creditor.

Nos. 2, 3, 4 and 5. Add warnings numbered 3, 4, 5 and 6 as shown in Form 47.

No. 6. Endorse notice as directed by section 98 in Form 48.

No. 7. Memorandum in Form 71 as required by section 177, in cases where debt sought to be garnished is for wages or salary, to be added here, unless included in particulars of claim.

71. MEMORANDUM UNDER SECTION 177 OF THE DIVISION
COURTS ACT IN A GARNISHEE SUMMONS.

(1) The primary debtor resides at the city of Hamilton, in the Province of Ontario, and his occupation in the service of the garnishees is that of an engine-driver (or as the case may be) on the railway of the garnishees (the Grand Trunk Railway Company of Canada) and is occupied as such on said railway between the cities of Toronto and Hamilton (or as the case may be).

(2) The debt alleged (or if after judgment "adjudged") to be due by the primary debtor to the primary creditor was incurred for board or lodging.

72. SUMMONS TO PRIMARY DEBTOR (BEFORE JUDGMENT)
AND GARNISHEE.

(Insert title of Court and style of cause as in Form 46.)

[Seal.]

No. , 18 .

The primary creditor claims from the primary debtor the amount of the annexed account.

You, the above-named primary debtor, are hereby summoned to appear at the sittings of this Court, to be held at the Court House, in the City of St. Thomas, in the said county of Elgin, next after the expiration of days from the time this summons is served on you, at the hour of o'clock in the forenoon, to answer the primary creditor who sues for the recovery of the annexed claim; and you, the garnishee, are required to appear at the same time and place to state and show whether or not you owe any and what debt to the primary debtor, and

why you should not pay the same into Court, to the extent of the primary creditor's claim, in satisfaction thereof; and take notice that if any or either of you desire to set up any statutory or other defence, or any set-off, or to admit the liability of any or either of you in whole or in part for the amount claimed in this action, you shall file with the clerk of this Court the particulars of such defence or set-off, or an admission of the amount due and owing by any or either of you within eight days after service on you, respectively, of this summons. You and all others interested may also show any other cause why the debt owing from the garnishee should not be paid and applied to satisfy the said claim of the primary creditor.

The sittings of the Court are set forth below.

Given under the seal of the Court, day of A.D. 189 .

ALEX. McBRIDE,

Clerk.

Claim\$

Costs of summons, exclusive of mileage, \$

WARNING TO GARNISHEE.

To the above-named Garnishee:

You are hereby notified that from and after the time of the service of this summons on you all debts due or accruing due from you to the above-named primary debtor are attached, and if you pay the same to any other than to the person holding the proper order to receive the same, or into Court, you will be liable to repay it in case the Court or Judge so order.

WARNING TO PRIMARY DEBTOR AND GARNISHEE.

Here add notices, warnings and endorsements as required by Form 70 and days of sittings of Court.

73. JUDGE'S ATTACHING ORDER.

In the	Division Court in the county of	
Between A. B., Plaintiff,	Judgment entered in the	
and	Division Court in the county of	
C. D., Defendant.	, on the day of	
	A.D. 18 .	

Amount unsatisfied \$.

On application of the plaintiff, and upon reading his affidavit, [or the affidavit of A. B., his solicitor (or "agent," as the case may be,)] it is ordered that all debts now owing to the defendant from E. F. or from any party in this Province, whether due, or accruing due, be and the same are hereby attached, to satisfy the judgment in this cause.

Dated the day of , A.D. 18 .

_____,
Judge.

Add warning as in next form.

73a. WARNING TO GARNISHEE.

To E. F. and all others, Garnishees:

You are hereby notified that from and after the time of the service of this order on you, all debts due or accruing due, from you to the above-named C. D., are attached, and if you pay the same to any one other than to the person holding the proper order to receive the same, or into Court, you will be liable to repay it, in case the Court or Judge so order.

73b. CLERK'S MEMORANDUM ON NON-APPEARANCE OF GARNISHEE.

(Under Consolidated Rule of Supreme Court of Judicature No. 943.)

Memorandum.

I, X. Y., clerk of the Division Court in the within order named, attended this day of , 18 , at the place within mentioned, from o'clock in the noon (as the case may be) till past in the noon (as the case may be) of the same day, and the said J. K. (garnishee) did not appear before me according to the said order.

X—— Y——,

Clerk.

MEMORANDUM OF ADMISSION OF DEBT, WHEN SIGNED BY GARNISHEE.

Memorandum.

On this day of , 18 , the within named
(Garnishee) appeared before me according to the within order,*
and admitted that he was and is indebted to the within named
G. H. (Judgment debtor) in the sum of \$ (if the whole debt
be not admitted, add, "and no more.") (If the garnishee be
willing to sign the admission, add "and signed the subjoined
admission in my presence").

X——— Y———,

Clerk.

I, J. K. , within named, admit that there is a debt
of \$ (If the whole debt be not admitted, add, "and no
more") due from me to the within named (Judgment debtor.)

J. K. (Garnishee signature).

MEMORANDUM, WHERE GARNISHEE DENIES DEBT.

On, etc. (as in previous form to the asterisk*), and disputes
the debt claimed to be due from him to the within named
(Judgment debtor).

(If the garnishee be willing to sign the denial of debt, add,
"and signed the subjoined denial of debt in my presence.")

X. Y.

I dispute the debt claimed to be due from me to
within named.

J——— K———,

(Garnishee signature).

74. FORM OF AFFIDAVIT OF SERVICE OF GARNISHEE
SUMMONS, AFTER JUDGMENT, ON THE AGENT OF
A BODY CORPORATE, UNDER SECTION 182
OF THE ACT.

(Title of Court and style of cause).

I, A. B., of , etc., make oath and say as follows:

1. That I did on the day of 18 , duly
serve G. H. with a true copy of the within

(or annexed) summons, notices, memorandum, or warnings therein and thereon, in this cause, by delivering the same to the said G. H. personally.

2. That at the time of such service the said G. H. was the agent of the above-named garnishees at (name of place), and that at the said time he as such agent had an office at (name of place), that such office was at the time of said service within the limits of the Division Court of the county of , and that I necessarily travelled miles to make such service.
Sworn, etc.

75. FORM OF AFFIDAVIT OF SERVICE OF GARNISHEE
SUMMONS BEFORE JUDGMENT ON THE AGENT
OF A BODY CORPORATE UNDER SECTION
185, SUB-SECTION 2.

Commence as in Form 74 to end of paragraph (1).

2. That at the time of such service the said G. H. was the agent of the above-named garnishees at (name of place), and that at the said time he as such agent, had an office at (name of place), and that I necessarily travelled miles to make such service.
Sworn, etc.

76. BOND UNDER SECTION 196.

(Commencement and conclusion same as in replevin bond except that the bond must be to the clerk by his name of office, conditioned as follows.)

Whereas, in a certain garnishee proceeding under the Division Courts Act, wherein the said A. B. is primary creditor, C. D. primary debtor, and E. F. garnishee, a certain debt of \$ due from the garnishee to the primary debtor, has been garnished to answer the debt of the primary creditor, and whereas the Judge of the said Court acting under the 196th section of the said Act, ordered that upon payment of the said debt by the garnishee to the primary creditor, security should be given by or on behalf

of the primary creditor for the repayment thereof into Court by the primary creditor. Now the condition of this obligation is such that if the above bounden A. B. do pay into Court the said debt, in case a proper order shall be made for such repayment, within five days after notice of such order, then this obligation to be void, else to remain in full force.
(Close as in replevin bond Form 65.)

MINUTES OF JUDGMENT IN PROCEDURE BOOK.

77. OF JUDGMENT AGAINST DEFENDANT FOR DEBT OR DAMAGES.

Judgment for the plaintiff* for \$ and \$ costs: to be paid in days (when an excess has been abandoned, add, being "in full discharge of his cause of action set forth in the claim").

* Add, "On verdict by jury," if such be the fact.

78. OF JUDGMENT UNDER SECTION 109 OF THE ACT.

The defendant, having been served with "Special Summons," and particulars of claim, and not disputing same (or "not disputing \$ part thereof), it is adjudged that plaintiff recover \$ for debt, and \$ costs.

R. ROE,
Clerk.

Dated day of , 18 .

79. ORDER FOR IMMEDIATE JUDGMENT UNDER SECTION 111.

Upon hearing and upon reading the affidavit of filed and

It is ordered that the plaintiff be at liberty to have the clerk of this Court enter, and the clerk is hereby empowered to enter final judgment in favour of the plaintiff against the defendant*

* If desired, the amount for which judgment is to be signed may be stated here instead of words in brackets.

(for the amount of the plaintiff's debt (or money demand) sought to be recovered in this action, as appear by the particulars of claim, endorsed on (or attached to) the special summons herein, with interest, (if any), and costs to be taxed.

Dated the day of 18 .

Judge.

80. JUDGMENT UNDER SECTION 111

Commence as in Form 78 to the words "claim" inclusive, then proceed—and disputing same (or some part thereof, as the case may be) and the plaintiff having made application to the Judge for an order for judgment, as provided by section 111 of the Act, and upon due notice to the defendant, the Judge, on the day of , A.D. 18 , made an order empowering the clerk to sign final judgment herein for the amount of the debt (or money demand) set forth in the said particulars, together with interest and costs it is adjudged, etc., conclude as in Form 78.

81. OF JUDGMENT WHERE SOME DEFENDANTS HAVE BEEN SERVED WITH SPECIAL SUMMONS, AND OTHERS HAVE CONFESSED.

The defendant, C. D., having been served with special summons and particulars of claim, and not disputing \$ part thereof, and the defendant E. F. and G. H. having confessed the same sum as due to the plaintiff. It is adjudged that the plaintiff recover \$ for debt and \$ for costs.

82. OF JUDGMENT OF NONSUIT OR DISMISSAL FOR WANT OF PROSECUTION.

Judgment of nonsuit, "or that the cause be dismissed" (if costs, etc., ordered, add, "and the plaintiff pay \$ for defendant's costs," or \$ for defendant's trouble and attendance, and \$ for his costs, to be paid in days).

83. OF JUDGMENT ON AWARD.

Judgment for the plaintiff (or defendant) for the sum of
 \$ and \$ costs (or for the sum
 of \$ costs) pursuant to award; to be paid
 in days.

84. OF JUDGMENT FOR DEFENDANT.

Judgment for the defendant* (or for the defendant
 for \$ costs; or \$ for his trouble and attend-
 ance, and also \$ for his costs; to be paid forthwith.

85. OF JUDGMENT FOR DEFENDANT ON SET-OFF, WHERE
SET-OFF IN PART SATISFIED.

It appearing that the defendant's set-off exceeds the plaintiff's
 claim; as proved by over \$100, it is adjudged that the plaintiff's
 claim, proved at \$ be discharged, and that the defendant's
 set-off to \$ be satisfied, and further, that the defendant
 do recover against the plaintiff \$ for costs to be
 paid in days.

86. OF JUDGMENT FOR DEFENDANT FOR BALANCE
OF SET-OFF.

It appearing that the defendant's set-off exceeds the plain-
 tiff's claim; it is adjudged that the plaintiff's claim, proved
 at \$, be discharged, and that the said set-off as to
 that amount be satisfied, and further, that as to \$
 residue of such set-off, the defendant have judgment for the
 same, together with \$ for his costs, to be paid
 in days.

87. JUDGMENT IN CASE OF COUNTERCLAIM.

It is adjudged that the plaintiff do recover against the de-
 fendant the sum of \$ for debt (or damages) and \$ for
 costs amounting together to the sum of \$, and that

the defendant, on his counter-claim, do recover against the plaintiff the sum of \$ for debt (or damages, as the case may be) and \$ for costs, amounting together to the sum of \$, and that the said sums be set-off one against the other and that the do recover from the the sum of \$ (being the difference between the said sums) to be paid in days.

88. FORMS OF JUDGMENTS AGAINST MARRIED WOMAN.

(a) In respect of liabilities incurred, whether for costs or otherwise, during marriage.

It is adjudged that the plaintiff (or defendant) do recover \$ and costs against the defendant (or plaintiff); such sum and costs to be payable out of her separate property as hereinafter mentioned and not otherwise. And it is ordered that execution hereon be limited to the separate property of the defendant (or plaintiff), B. A., not subject to any restriction against anticipation, unless by reason of the Married Woman's Property Act, the property shall be liable to execution notwithstanding such restriction.

(b) Where the judgment is recovered in respect of a debt contracted by her before marriage.

It is adjudged that the plaintiff do recover the sum of \$ and costs against the defendant, A. B., such sum and costs to be payable out of her separate property whether subject to any restriction against anticipation or not, and not otherwise.

89. JUDGMENT FOR COSTS UNDER SECTION 209 OF THE ACT.

The defendant having disputed the plaintiff's claim—but afterwards, before the opening of the Court to which he was summoned, confessed judgment—(or paid the claim) so short a time before the sitting of the Court that the plaintiff could not in the ordinary way be notified thereof—and the plaintiff having *bona fide* and reasonably incurred \$ expenses, in procuring witnesses to attend the Court to prove his case (or in attending at Court).

It is therefore adjudged and ordered that the defendant do pay the said plaintiff the sum of \$ for such costs.

90. ENTRY OF JUDGMENT FOR DEFENDANT'S COSTS
UNDER RULE 252*a*.

The plaintiff being desirous of not proceeding in this cause, but failing to give notice thereof and pay defendant's costs, and not proceeding to trial at a Court holden this day, the defendant having applied for his costs (or the cause not being withdrawn until after the opening of Court), it is adjudged that the defendant do recover against the plaintiff the sum of \$ _____ for costs incurred in preparing for trial (or in attending Court) before notice of such withdrawal, and for costs of his defence.

91. MINUTE OF JUDGMENT FOR CLERK WHEN
JUDGMENT POSTPONED.

In the _____ Division Court in the County of _____
Between A—— B——, Plaintiff,
and
C—— D——, Defendant.

At the sittings of this Court held on the _____ day of _____, 18 . at _____, in the said Division, this case came on to be heard, and after the hearing thereof by the Judge in open Court the giving of judgment thereupon was postponed by the Judge till the _____ day of _____ 18 , at the hour of _____, at the office of the Clerk of this Court; the case having since been maturely considered by the Judge. It is adjudged, etc. (according to judgment).

The Clerk will read this decision to the parties or their agents, if present, and forthwith enter judgment according to the statute in that behalf.

Dated, etc.

Judge.

92. FORM OF JUDGMENT AGAINST A FIRM, ETC.

Judgment for the plaintiff against the said firm of A. B. & Co., and also against O. P., the partner thereof served with the copy of summons herein, and who has failed to appear (and also against R. S. who has admitted in the notice of dispute or defence filed that he is, or who has been adjudged a partner of the said firm; for \$ _____, and \$ _____ costs, to be paid forthwith (or as the case may be).

93. OF ORDER FOR IMPOSITION OF FINE FOR CONTEMPT.

It is adjudged that E. F., at the sittings of this Court, now holden, in open Court, is guilty of a contempt of the said Court, by wilfully insulting _____, Judge (or deputy or acting Judge) of the said Court (or "in view of the Court, by wilfully insulting _____, clerk (or bailiff) of the said Court, during his attendance at such Court" (or by wilfully interrupting the proceedings of the said Court"); and it is ordered that the said E. F. forthwith pay a fine of \$ _____ for such offence, and, in default of immediate payment, be committed to the common jail of this county for _____ days, unless such fine, the costs herein, and the expense attending the commitment be sooner paid.

94. OF IMPOSITION OF FINE ON A JUROR FOR NON-ATTENDANCE.

Adjudged that G. H. was duly summoned to attend this Court, now holden, as a juror, that he hath wilfully neglected (or refused) to attend the Court in obedience to the summons, and that he do within _____ days (or forthwith) pay a fine of \$ _____.

95. ENTRY IN THE PROCEDURE BOOK UNDER THE CREDITORS' RELIEF ACT, WHERE THERE IS A JUDGMENT.

The plaintiff (or defendant) as a creditor of the defendant (or plaintiff) having served upon the sheriff of the county of _____, a memorandum of the amount of this judgment under the Creditors' Relief Act, under which proceedings were taken against the defendant (or plaintiff) for the recovery thereof and because the same was not paid in full (where part of the judgment has been paid through those proceedings or otherwise here state it thus) but \$ _____, part thereof, having been paid the said sheriff hath returned as follows (here state the return)

and because he was unable to make the residue (or the money thereon) satisfaction is entered for the sum of \$, part thereof. (If no part was recovered leave out the words "satisfaction is entered for the sum of \$, part thereof," and judgment is entered for the plaintiff (or defendant) for the sum of \$ balance of the debt (or damages) and \$ costs.

96. JUDGMENT UNDER THE CREDITORS' RELIEF ACT.

(Where the proceedings were not upon a judgment or execution, but upon a certificate of claim).

(Proceed as in previous form to the words "a memorandum" and thence as follows: A certificate for a claim within the jurisdiction of this Court, amounting to the sum of \$ debt (or damages) and \$ cost, under the Creditors' Relief Act, under which proceedings were taken for the recovery thereof against the defendant (or plaintiff), which not being paid in full, and the said sheriff being unable to make the money thereon, returned the same under the provisions of the said Act, judgment is therefore entered for the plaintiff (or defendant) for \$ debt and \$ costs. (If the sheriff has returned that he has made part, then the fact should be stated and judgment should be entered for the residue only).

97. ORDER FOR JUDGMENT WITHOUT PLAINTIFF'S FILING NOTE SUED ON.

(Title of Court and style of cause.)

(Date, etc.)

Upon the application of the plaintiff, and upon reading the affidavit of , filed, it is ordered that the plaintiff be at liberty to have judgment entered in his favor in this action without his filing the note sued on herein, on his filing a true copy thereof with the clerk of the Court.*

Judge.

*Provide for case of bond where note lost.

98. JUDGMENT AGAINST DEFENDANT ON CONFESSION
BEFORE ACTION.

C. D., being indebted to A. B. in the sum of \$ for a debt, and having acknowledged the same in writing (with particulars attached thereto) before G. L., clerk (or bailiff) of this Court, and the same being duly proved and produced to the judge, and the said A. B. requesting judgment thereon, it is adjudged that the said A. B. do recover against the said C. D. the said sum of \$ for debt, and \$ for costs.

99. JUDGMENT ON CONFESSION AFTER ACTION.

The defendant having been served with summons and particulars of claim for a debt, amounting to \$ (and the plaintiff having consented to take the defendant's acknowledgment for the sum of \$, part thereof, and abandoned the residue; or having allowed the defendant's set off thereout; or made certain deductions claimed therefrom), and the defendant having confessed the same (or \$) in writing before G. L., clerk (or bailiff), and the confession being duly proved and produced. (Conclude as in the preceding form.)

100. JUDGMENT WHERE EXECUTION POSTPONED BY CON-
SENT OF JUDGMENT CREDITOR BEYOND 50 DAYS.

Judgment* for the plaintiff for \$ debt and \$ for costs, to be paid as follows:—(Here state the time when, or the instalments by which the judgment is to be satisfied) the plaintiff (or the party entitled to the same) having consented to this postponement.

(When an excess has been abandoned or the defendant has paid money into Court which has not been accepted add, "being in full discharge of his cause of action set forth in the claim.")

*Add "on verdict of jury" if the cause was tried by the jury.

101. ORDER TO SUSPEND ORDER, OR JUDGMENT, OR EXECUTION.

(Insert title of Court and style of cause.)

It is ordered that the judgment (or order) for that the execution under the judgment (or order) of this Court in this action, bearing date the day of , A.D. 18 , be suspended until the day of , A.D. 18 .

Dated this day of , A.D. 18 .

Judge.

9 (C.R.)

102. ORDER POSTPONING EXECUTION OR JUDGMENT UNDER SECTION 147.

(Title of Court and style of cause.)

Whereas, the plaintiff obtained a judgment against the defendant in this Court on the day of , 18 , for the payment of \$ debt (or damages) and \$ for costs and the defendant was ordered to pay the same at a day now past (if by instalments, specify them), and it has been made to appear to the satisfaction of the judge by affidavit (or affirmation, or otherwise) that the defendant is unable from sickness (or other sufficient cause) to pay and discharge the debt (or damages) recovered against him (or any instalment thereof, if the same was ordered to be paid by instalments) so ordered to be paid. I do therefore order that the said judgment (or execution, or order, as the case may be) be stayed (or suspended) for (here specify the time and terms upon which the order is granted).

Dated this day of , 18 .

Judge.

103. ENTRY IN THE PROCEDURE BOOK OF JUDGE'S ORDER FOR EXECUTOR OR ADMINISTRATOR TO REVIVE A JUDGMENT.

On the day of 18 , it was ordered by the judge that the plaintiff as executor (or administrator) have execution against the defendant of a judgment of this Court (or of the Division Court, etc.,) whereby the said C. D. in his lifetime, on recovered against the said defendant the sum of \$ etc.

104. ENTRY OF ORDER IN PROCEDURE BOOK THAT JUDGMENT BE REVIVED AGAINST AN EXECUTOR OR ADMINISTRATOR.

On the day of , 18 , it was ordered by the judge that the plaintiff have execution against the defendant, as executor (or administrator) of E. F., deceased, of a judgment of this Court (or of the Division Court, etc.) whereby the plaintiff, on recovered against the said E. F. in his lifetime the sum of \$ to be levied of the goods and chattels of the said deceased, in the hands of the said defendant to be administered.

105. OF JUDGMENT AGAINST EXECUTOR OR ADMINISTRATOR ON DEVASTAVIT AFTER JUDGMENT.

Judgment that the defendant has wasted goods and chattels of A. B., deceased, to the sum of \$, whereby a judgment recovered against him by the plaintiff in the Division Court in the County of , on the day of , 18 , remains unsatisfied; and that the plaintiff now recovered against the defendant the first named sum, and also \$ costs; to be paid in days.

106. OF JUDGMENT AGAINST EXECUTOR OR ADMINISTRATOR, WHO ADMITS HIS REPRESENTATIVE CHARACTER, AND THE PLAINTIFF'S DEMAND, BUT ALLEGES A TOTAL OR PARTIAL ADMINISTRATION OF ASSETS AND DOES NOT PROVE THE ADMINISTRATION.

Judgment for plaintiff for \$ debt, and \$ costs, to be paid in days; full (or partial) administration, which was alleged, and disputed, not having been proved, Ordered that the said sums be levied of the goods and chattels of the deceased; failing such goods, then the debt of the goods and chattels, hereafter to come to the defendants hands to be administered, and the costs to be levied of the defendant's proper goods.

107. OF JUDGMENT AGAINST EXECUTOR OR ADMINISTRATOR, WHO ADMITS HIS REPRESENTATIVE CHARACTER, AND THE PLAINTIFF'S DEMAND, BUT ALLEGES A TOTAL OR PARTIAL ADMINISTRATION OF ASSETS AND PROVES THE ADMINISTRATION.

Judgment for plaintiff for \$, to be paid in days; to be levied of the goods and chattels of the deceased, hereafter to come to the defendant's hands to be administered, debt not being denied, and full (or partial) administration, which was denied, having been proved, Ordered that the plaintiff pay \$ for the defendant's costs in days.

108. OF JUDGMENT AGAINST EXECUTOR OR ADMINISTRATOR, WHERE THE DEFENDANT ADMITS HIS REPRESENTATIVE CHARACTER, BUT DENIES THE DEMAND AND ALLEGES TOTAL OR PARTIAL ADMINISTRATION OF ASSETS, AND THE PLAINTIFF PROVES HIS DEMAND AND THE DEFENDANT DOES NOT PROVE ADMINISTRATION.

Judgment for plaintiff for \$ for debt, and also \$ costs, to be paid in days, to be levied of the goods and chattels of the deceased; failing such goods, then the said costs to be levied of the defendant's proper goods, and the debt to be levied of the goods and chattels of the deceased, hereafter to come to the defendant's hands to be administered, the plaintiff's demand having been proved, which was denied, and administration, which was alleged, not having been proved.

109. OF JUDGMENT AGAINST AN EXECUTOR OR ADMINISTRATOR, WHERE HE ADMITS HIS REPRESENTATIVE CHARACTER, BUT DENIES THE DEMAND, AND ALLEGES TOTAL OR PARTIAL ADMINISTRATION OF ASSETS, AND THE PLAINTIFF PROVES HIS DEMAND, AND THE DEFENDANT PROVES ADMINISTRATION.

Judgment for the plaintiff for \$ debt, and also \$ costs, to be paid in days; the plaintiff's demand which was

denied, having proved and full (or partial) administration also having been proved, which was denied, the said costs to be levied of the goods and chattels of the deceased; failing such goods, then of the defendant's proper goods; the said debt to be levied of the goods and chattels of the deceased, hereafter to come to the defendant's hands to be administered; and ordered that \$, the costs of proving such administration, be paid by the plaintiff in days.

110. OF ORDINARY JUDGMENT AGAINST EXECUTOR OR ADMINISTRATOR.

Judgment for plaintiff for \$ and \$ costs, to be paid in days, to be levied of the goods and chattels of the deceased; failing such goods, the costs to be levied of the defendant's proper goods and chattels.

111. OF JUDGMENT AGAINST AN EXECUTOR OR ADMINISTRATOR, WHO ADMITS HIS REPRESENTATIVE CHARACTER, AND DENIES THE DEMAND.

The same as in ordinary judgment against executor or administrator. Form 110.

112. OF JUDGMENT AGAINST AN EXECUTOR OR ADMINISTRATOR WHO HAS DENIED HIS REPRESENTATIVE CHARACTER, OR PLEADED A RELEASE TO HIMSELF.

The same as in ordinary judgment against executor or administrator. Form 110.

113. OF JUDGMENT AGAINST AN EXECUTOR OR ADMINISTRATOR, WHO HAS WASTED ASSETS.

Judgment for plaintiff for \$ and \$ costs, to be paid in days, to be levied of the goods and chattels of the deceased; failing such goods, then the whole (or the sum of \$ and the said costs to be levied of the defendant's proper goods and chattels; the defendant having wasted the goods of the deceased to that amount.

114. MINUTE IN PROCEDURE BOOK OF JUDGMENT
AGAINST GARNISHEE ON JUDGMENT ALREADY
ENTERED.

Judgment entered on the day of in the Div-
ision Court in the County of year No. , 18 .
Amount unsatisfied, \$

On hearing all parties, [or on "hearing the above-named"
(the parties appearing), and upon proof of the debt, it is adjudged
that the garnishee is indebted to the primary debtor in \$ now
due (or coming due as follows,) which
(or \$ of which) ought to be applied in satisfaction
of the said judgment, and that the said primary creditor do
recover the same against the garnishee, for levying whereof
execution may issue days from this date unless
the garnishee shall sooner pay the same into Court, to satisfy
the said judgment.

Entered the day of A.D. 18 .

115. MINUTE WHERE THE DEBT DUE BY THE GARNISHEE
IS PAYABLE BY INSTALMENTS.

Same as above, from the words "primary debtor" \$ in-
clusive, and from thence proceed, not now due, but payable by
instalments, as follows (here state the instalments and when
payable), \$ of which ought to be applied in satisfaction
of the said judgment and that the primary creditor do recover
against the garnishee, by instalments of \$ every (here
specify when payments ordered to be made.) The first of such
instalments to be paid on the day of 18 , unless
etc., close as in the preceding form.

116. MINUTE IN PROCEDURE BOOK OF JUDGMENT
AGAINST PRIMARY DEBTOR AND AGAINST
GARNISHEE.

On hearing all parties [or "on hearing the primary creditor
(or as the case is) the primary debtor (or as the case is having
made default.] It is adjudged, 1st., that the primary debtor is

indebted to the primary creditor in \$, and that he do pay the same and \$, costs in days. 2nd., That the garnishee is indebted to the primary debtor in \$, *which, (if the garnishee's debt be larger than the primary creditor's claim, say, "to the extent of the two first mentioned sums") ought to be applied in satisfaction thereof. 3rd., that the primary creditor do recover against the garnishee the said sum of \$ to be paid in days (as time may be given for payment or debt becomes due) in satisfaction as aforesaid.

117. WHERE THE DEBT DUE BY THE GARNISHEE IS PAYABLE BY INSTALMENTS.

Same as Form (116) up to the asterisk* from thence proceed, not now due, but payable by instalments as follows: (here state the instalments and when payable) as in Form (116) to the end.

118. WHERE THE GARNISHEE HAS SET UP DEFENCE WHICH HE KNEW TO BE UNTENABLE.

And inasmuch as the garnishee has set up a defence, which he knew or ought to have known was untenable, it is adjudged that he do pay the costs of this proceeding amounting to \$ forthwith (or within days.)

119. MINUTE OF JUDGMENT IN FAVOR OF GARNISHEE, PRIMARY DEBTOR OR CLAIMANT.

On hearing all parties (or on hearing the garnishee, the primary creditor having made default), it is adjudged that the garnishee is not indebted to the primary debtor as claimed by the primary creditor, and that the primary creditor pay the garnishee \$ for his costs, to be paid in days.

120. JUDGMENT WHERE PRIMARY CREDITOR FAILS IN
RECOVERY OR PROVING FOR CLAIM AND PRO-
CEEDINGS HAVE BEEN CONTINUED AS
BETWEEN THE PRIMARY DEBTOR AND
THE GARNISHEE.

The primary creditor having failed to prove his claim against the primary debtor or become non-suited, and upon hearing the matter in controversy between the primary debtor and the garnishee, it is adjudged that (here follow any other form of judgment suitable to the case of an ordinary proceeding between plaintiff and defendant) and it is ordered that the primary creditor do pay the primary debtor (or garnishee.) Here state whatever the judgment may be as to costs or otherwise.)

121. Judgment for the primary debtor (or for the garnishee, or for the third party claimant) against the primary creditor for \$ costs (or for \$, for his trouble and attendance and for his costs), to be paid forthwith (or within fourteen days.)

122. It appearing that the set-off of the primary debtor exceeds the claim of the primary creditor, as proved by over \$100, it is adjudged that the claim of the primary creditor proved at be discharged and that the set-off of the primary debtor to \$ be satisfied; and further that the primary debtor do recover against the primary creditor \$ for his costs to be paid in days, and that the attachment of the debt garnished be discharged.

123. SUMMONS UNDER SECTION 197, WHERE A THIRD
PARTY CLAIMS THE MONEY GARNISHED.

(Title of Court and style of cause.)

Upon reading the garnishee summons issued in this cause, and upon hearing the primary creditor [the primary debtor] and the garnishee;

It is ordered that the further hearing of the parties to the said summons herein do stand adjourned until the day of A.D. 189 , at (or "the next sittings of this Court") and that G. H. who claims to be entitled to the said debt, the primary creditor, the primary debtor, and the garaishee, their solicitors or agents, attend before the presiding Judge at the next sittings of this Court, at , on the day of , A.D. 189 , at o'clock in the noon, of the same day (or such other time as may be appointed) and state the nature and particulars of their respective claims to such debt, and maintain or relinquish the same, and abide by such order as may by the said presiding Judge be made herein, and that the costs of the adjournment and of this order be costs in the cause.

Dated, etc.

Judge.

124. JUDGMENTS IN REPLEVIN.

In favor of plaintiff.

Judgment for the plaintiff (if case tried with a jury and on verdict by jury) for \$ and \$ costs, to be paid in days.

125. IN FAVOR OF DEFENDANT IN REPLEVIN FOR RENT.

Adjudged that the plaintiff do return to the defendant the goods and chattels (or cattle), (stating the particulars) and pay \$ for costs in days [or adjudged that the amount due for rent in arrear from the plaintiff to the defendant is \$, and that the goods and chattels (or cattle) were of the value of \$, and that the plaintiff do in days pay the said sum of \$ and also the sum of \$ for costs of suit.]

126. IN FAVOR OF DEFENDANT IN REPLEVIN OF CATTLE, DAMAGE PEASANT.

Adjudged that the plaintiff do return to the defendant the cattle (here specify the cattle) or do pay in days the sum of \$ which is adjudged as the amount of damage sustained by the defendant, and that the plaintiff do pay within days \$ for costs.

127. IN FAVOR OF DEFENDANT WHERE REPLEVIN IS NOT FOR RENT
OR FOR DAMAGE FEASANT.

Adjudged that the plaintiff do return to the defendant the goods and chattels (or the cattle) (stating the particulars thereof) to the plaintiff, or do pay the sum of \$ their value, to the defendant in days \$ for costs of suit (if damages be awarded add, and \$ for damages sustained by the defendant.)

DETINUE.

128. JUDGMENT FOR DELIVERY OF GOODS.

It is adjudged that the plaintiff do recover against the defendant the following goods and chattels of the plaintiff wrongfully detained by the defendant, that is to say:—

(Here enumerate the chattels which the Court decides have been detained) or \$ their value, and also the sum of \$ for damages, for their said detention, and the sum of \$ for costs.

And it is ordered that the defendant do return the said goods to the plaintiff, or do pay the sum of \$ their value, to the clerk of this Court, on the day of A.D. 18 .

And it is further ordered that the defendant do pay the said damages and costs, amounting together to the sum of \$ to the clerk of the Court, on the day of A.D. 18 (or forthwith.)

If the Judge makes an order at the trial for a return of the goods and chattels without giving the defendant the option of returning them, omit the words in brackets and substitute the following:—

And it is ordered that the defendant do return the said goods and chattels to the plaintiff, on the day of A.D. 18 , and that in default of his so doing a warrant of delivery do issue.

129. FORM OF JUDGMENT, WHERE IMMEDIATE RETURN
IS ORDERED WITH DAMAGES AND COSTS.

It is adjudged that the defendant does unjustly detain the goods and chattels of the plaintiff, viz.: (here enumerate and

130. ORDER ON PARTY TO PAY COSTS TO CLERK, UNDER
SECTION 55.

Upon reading the summons herein granted on the _____ day of _____, A.D. 18____, the affidavit filed, the affidavit of service thereof, and upon hearing the clerk of the said _____ Division Court, and the said plaintiff (or as the case may be), I do, order that the said _____ do pay to the clerk of this Court the sum of \$ _____ within _____ days from this date, as the fees which should have been paid by him to the clerk of the Court on the proceedings herein, and which now remain unpaid, together with the costs of this proceeding, and in the event of the said sum not being so paid, it is further ordered that execution do issue against the goods and chattels of the said _____, or that the same be made and levied by such ways and means as any debt or damages ordered to be paid by the Court may or can be recovered by process of the said Court, and that an entry of this order be made in the Procedure book.

Dated at this day of , 189 .
Judge.

Form of entry of judgment under section 152.

This case having been appealed to a Judge of the Court of Appeal, who having ordered (or given direction) touching the decision (or judgment) to be given herein, judgment is therefore entered (here state the short material provision of the order), as the case may be (with costs to be paid, as ordered.)

EXECUTIONS.

132. AGAINST GOODS OF DEFENDANT.

(Insert title of Court and style of cause.)

No. , A.D. 18 .

[Seal]

Whereas, on the day of , A.D. 18, the plaintiff duly recovered in said Court judgment against the defendant, for \$ for debt (or damages), and \$ for costs of suit, which remains unsatisfied (when the judgment has been revived, add, "and on the day of A.D. 18 , the said judgment was duly revived"), you are hereby required to levy of the goods and chattels of the defendant, in the said County (not exempt from execution), the said moneys amounting together to the sum of \$ and your lawful fees; so that you may have the same within thirty days from the date hereof and pay the same over to the clerk of this Court for the plaintiff.

Given under the seal of the Court this day of
A.D. 18 .

X. Y.
Clerk.

To V. W.

Bailiff of said Court.

Judgment \$
Interest
Subsequent costs
This execution

Levy the sum of.....\$, and your lawful fees upon this precept.

132a. In case several judgments have been recovered against an absconding debtor, and one execution is issued thereupon, in pursuance of Rule 30, such execution should recite the several recoveries, with their respective amounts.

133. WARRANT OF EXECUTION WHERE ONE OF SEVERAL
PLAINTIFFS HAS DIED AFTER JUDGMENT AND
BEFORE EXECUTION.

Same in all respects as other warrant except that the following may be inserted after the statement of the recovery of judgment:

And whereas G. R., one of the plaintiffs, has died since judgment was given (or signed) and before execution executed.

134. AGAINST GOODS OF PLAINTIFF.

(Insert title of Court and style of cause.)

No. , A.D. 18 .

[Seal]

Whereas, on the day of A.D. 18 .
in said Court, judgment was given for the defendant, and for
\$ costs (or judgment was given that plaintiff be non-
sued; or that the action be dismissed, and that the plaintiff do
pay the sum of \$ to the defendant for his trouble and
attendance, and \$ for his costs which remains unsatisfied
—(here follow the last form of execution, to end, transposing
the words "plaintiff" and "defendant" where they occur.)

135. ON JUDGMENT FOR BALANCE OF SET-OFF.

(Insert title of Court and style of cause.)

[Seal]

No. , A.D. 18 .

Whereas, at the sittings of this Court, holden on the
day of , A.D. 18 , it was adjudged that the
above-named defendant should recover against the above-named
plaintiff the sum of \$, the residue of his set-off exceeding
the plaintiff's claim, together with \$ his costs of suit, which
remains unsatisfied, you are hereby required. (Conclude as
directed in last form.)

136. FOR COUNTERCLAIM.

The same as the foregoing form, to the words "the residue" inclusive, and proceed of his counter-claim (exceeding the plaintiff's claim (as the case may be) together with \$, his costs of defence and of proving his said counter-claim (or, as the case may be) which remains unsatisfied, etc. (Conclude as directed in previous forms.)

137. EXECUTION UNDER SECTION 82, WHERE JUDGMENT OBTAINED AGAINST A DEFENDANT RESIDING IN A FOREIGN COUNTRY.

(Insert title of Court and style of cause.)

[Seal]

No. , A.D. 18 .

Whereas, the place of sitting of this Court is nearest to the defendant's residence, and at the sitting of the said Court holden on the day of A.D. 18 , in and for the said division, by judgment of the said Court, the plaintiff recovered against the defendant, under the provisions of section 82 of the Division Courts Act, the sum of \$ for debt, and \$ for costs remaining unsatisfied, you are hereby required to levy of the goods and chattels of the defendant (not exempt from execution in the said County of or in the County of where the defendant resides) the said moneys, etc. (Conclude as in Form 132.)

138. ON TRANSCRIPT OF JUDGMENT FROM ONE DIVISION COURT TO ANOTHER.

(Insert title of Court and style of cause.)

No. , A.D. 18 .

[Seal]

Whereas, on the day of , A.D. 18 , the plaintiff duly recovered in the Division Court in the County of , judgment against the defendant for \$ for debt, and \$ for costs of suit (If the judg-

ment was revived, use the following words, "and on the day of , A.D. 18 , the said judgment was duly revived") as appears by a transcript of the entry of such judgment attested by the seal of the Court, certified and signed by the clerk thereof, and sent and addressed to the clerk of this Division Court, pursuant to the provisions of "The Division Courts Act: " And whereas, it appears, by certificate of the first mentioned clerk at the foot of the said transcript, that the amount unpaid on the said judgment is \$, which said transcript and certificate is duly entered in the book of this Court, therefore you are hereby required, etc. (Conclude as in Form 132.)

139. FOR AN EXECUTOR ON JUDGMENT REVIVED IN HIS FAVOUR.

(Title of Court.)

No. , A.D. 18 .

Between A. B., executor of C. D. (or administrator), deceased,
Plaintiff,

and

E. F., Defendant.

[Seal]

You are hereby required to levy of the goods and chattels of the defendant (not exempt from execution) in the said County of the sum of \$, which C. D. in his lifetime in this Court (or in the Division Court, etc.) on , recovered against the defendant for his debt (or damages) and costs. (Leave having on the day of A.D. 18 . been given to the plaintiff or executor (or administrator) of the said C. D. to issue execution for the recovery thereof with costs), together with your lawful fees.

And you are further required to have that money within thirty days after the date hereof, and to pay the same over to the clerk of this Court for the plaintiff.

(Conclude as in other forms of executions.)

140. OF JUDGMENT REVIVED AGAINST EXECUTOR OR ADMINISTRATOR.

In the Division Court, in the County of
No. , A.D. 18 .
Between A. B., Plaintiff,

C. D., Executor of E. F., deceased, Defendant.

[Seal]

You are hereby commanded (or as before or as often before) to make and levy by distress and sale of the goods and chattels of E. F., deceased, in the County of _____ (not exempt from execution) in the hands of the said defendant, as executor (or administrator) to be administered, the sum of _____ which the plaintiff in this Court (or in the _____ Division Court, etc.), on _____, recovered against the said deceased in his lifetime for the plaintiff's debt (or damages) and costs, and whereof it was on _____ ordered by the Judge of this Court (or of the _____ Division Court, etc.), that the said plaintiff should have execution against the said defendant as executor (or administrator) of the said deceased, to be levied of the goods and chattels of the said deceased in the said defendant's hands to be administered, together with the costs of execution herein, and your lawful fees; so that you have the same within thirty days after the date hereof, and pay the same over to the clerk of this Court for the plaintiff.

(Conclude as in previous forms of executions.)

N.B.—Executions upon the judgments in other causes against executors may be drawn from this Form, with the requisite alterations.

141. AGAINST GOODS OF TESTATOR.

In the Division Court in the County of
No. , A.D. 18 .
Between A. B., Plaintiff,

C. D., Executor (or Administrator) of E. F., deceased,
Defendant.

[Seal.]

Whereas on the day of A.D. 18 , the plaintiff duly recovered in the said Court, judgment against the said defendant as executor (or administrator) of E. F., deceased, the sum of \$, for a certain debt with \$ for costs, to be levied of the goods and chattels of the deceased; failing such goods, the costs to be levied of the defendant's proper goods and chattels, which said debt and costs were ordered to be paid at a day now past, and remain unsatisfied: These are therefore to command you, forthwith to make the levy, by distress and sale of the goods and chattels, which were the property of the said E. F. in his lifetime, in the hands of the defendant to be administered in the said County of (not exempt from execution), the said debt and costs, amounting together to the sum of \$, together with the costs of this execution, if the defendant have so much thereof in his hands to be administered; and if he hath not so much thereof in his hands to be administered, then that you levy of the proper goods and chattels of the defendant, in the said County of not exempt from execution, the said costs and your lawful fees, so that you may have the same within thirty days after the date hereof and pay the same over to the clerk of this Court for the plaintiff.

(Conclude as in previous forms of executions.)

142. FORM OF EXECUTION IN REPLEVIN AGAINST PLAINTIFF WHEN RETURN OF GOODS ADJUDGED WITH DAMAGES AND COSTS.

No. , A.D. 18 .

In the Division Court in the County of
Between Henry Bray, Plaintiff,
and
John Nokes, Defendant.

[Seal.]

Upon hearing this action of replevin at a sitting of the Court holden at in and for the said division on the day of 18 , it was adjudged that the plaintiff do return to the defendant the goods and chattels (or the cattle, stating the particulars thereof) forthwith or in days), and that the plaintiff do pay the defendant in days \$ for

costs of suit (if damages have been awarded add and also
 \$ for damages sustained by the said defendant) and
 the plaintiff has not returned to the said defendant the said
 goods and chattels (or the said cattle), or paid the said costs (if
 damages have been awarded and have not been paid add and
 damages), these are therefore to require and order that without
 delay you cause the said goods and chattels (or the said cattle)
 to be returned to the defendant and that you levy of the goods
 and chattels of the plaintiff in the said County of (not
 exempt from execution), the said moneys amounting together to
 the sum of \$ and your lawful fees, so that you
 may have the same within thirty days after the date hereof, and
 pay the same over to the clerk of this Court for the plaintiff.

And you are also required and ordered forthwith to make
 return to the clerk of this Court of what you shall have done in
 and about returning the said goods and chattels (or the said
 cattle) to the defendant.

Given under the seal of the Court this day of

18 .

To Henry McPhall,
 Bailiff of said Court.

DAVID B. JONES,
 Clerk.

Judgment\$

Interest\$

Subsequent costs \$

This execution..\$

Levy the sum of \$ besides your lawful fees on this precept.

143. EXECUTION ON ORDER FOR NON-PAYMENT OF FEES TO THE CLERK, UNDER SECTION 55.

[Seal.]

(Insert title of Court and style of cause as in summons as in
 Form 56).

Whereas the fees upon the proceedings in this cause were
 not paid in the first instance by the plaintiff (or by X. G., the
 party on whose behalf the said proceedings were had) before
 such proceedings were taken and instituted, as required by
 section 54 of the Division Courts Act; and the payment thereof

has been ordered by the Judge, of which the said plaintiff (or X. G.) has had due notice; the same having been duly demanded, and there being now due thereon the sum of \$ _____, which the said plaintiff (or X. G.) has neglected to pay.

You are therefore ordered and required to levy of the goods and chattels of the said plaintiff (or X. G.) not exempt from execution, the sum of \$ _____ and your own fees, etc. (conclude as in other executions against plaintiff for costs).

To Thomas Sturge,

Bailiff.

_____,
Judge.

(Mem. as in other executions.)

_____,
Clerk.

GARNISHEE PROCEEDINGS.

144. EXECUTION AGAINST GARNISHEE ON JUDGMENT ALREADY RECORDED.

In the _____ Division Court in the County of _____

Between A. B., Primary Creditor,	}	Judgment recovered on the
and		day of _____ A.D. 18 _____
C. D., Primary Debtor,		in the _____ Division Court
and		in the _____ County of _____
[Seal.] E. F., Garnishee.		Amount unsatisfied \$ _____

Whereas, on the _____ day of _____ A.D. 189 _____, it was ordered that the garnishee should pay the primary creditor the sum of \$ _____ (or if by instalments, state the fact) being the (or so much of the) amount of the debts found to be due from him to the primary debtor (or as is sufficient to satisfy the judgment of the primary creditor) and default having been made therein (or \$ _____ part thereof being in default) according to the said order.

You are hereby required to levy of the goods and chattels of the garnishee in the County of _____ (not exempt from execution), \$ _____ so owing from him to the primary debtor, and ordered to be paid; and your lawful fees.

And what you shall have done, etc. (proceed the same as in ordinary executions).

145. FORM OF EXECUTION AGAINST GARNISHEE ONLY,
ON A CLAIM NOT A JUDGMENT, WHERE NO
JUDGMENT GIVEN AGAINST PRIMARY
DEBTOR.

(Title of Court and style of cause.)

[Seal.]

Whereas, at the sittings of this Court held on the day
of 18 , it was sufficiently proved that the sum of
\$ was and is due and owing for a debt (or money
demand) over which this Court had jurisdiction, from the primary
debtor to the primary creditor, and that the sum of \$
was and is due and owing to the primary debtor from the garni-
shee (or E. R., one of the garnishees) for a debt (or money
demand) over which this Court had jurisdiction, and the primary
creditor hath attached such last mentioned debt from the
garnishee (or E. R., one of the garnishees), or sufficient thereof
to satisfy his claim to the extent of \$, and the
garnishee was ordered to pay into Court the sum (or part of the
sum) so due and owing by him to the primary debtor (if by
instalments then state them) to satisfy the claim of the primary
creditor, and default having been made therein, you are hereby
requested to levy, etc. (Here proceed as in Form 144).

146. EXECUTION AGAINST PRIMARY DEBTOR AND
GARNISHEE.

In the Division Court in the County of
Between A. B., Primary Creditor,
and
C. D., Primary Debtor,
and

[Seal.] E. F., Garnishee.

No. , A.D. 18 .

Amount adjudged due from the primary debtor to the primary
creditor, the day of , A.D. 18 , for debts\$

For costs\$

Total debt and costs\$

Amount adjudged to the primary creditor, for money
owing from the garnishee, the day of .

A.D. 18 \$

To V. W., Bailiff of the said Court.

You are hereby required to levy of the goods and chattels of the primary debtor, in the said County of K. (not exempt from execution), \$ above adjudged to be due to the primary creditor from the primary debtor, together with the costs of this precept, and your lawful fees in executing the same. And if so much goods and chattels of the primary debtor be not found in the said County as will satisfy the said judgment, then that you levy of the goods and chattels of the garnishee in the said County (not exempt from execution) \$ (or so much thereof as may be necessary to satisfy the said judgment) money owing from the garnishee to the primary debtor, and which has been adjudged to the primary creditor; and your lawful fees and what you shall have done herein return with this writ within thirty days after the date hereof. (Conclude as in other executions.)

147. EXECUTION AGAINST GARNISHEE ON JUDGMENT
RECOVERED AGAINST HIM AND PRIMARY
DEBTOR.

In the Division Court in the County of
Between A. B., Primary Creditor,
and
C. D., Primary Debtor,
and
E. F., Garnishee.

Amount adjudged due from the primary debtor to the
primary creditor the day of , A.D. 18 , for
debt\$

For costs\$

[Seal.]

Total sum\$

Amount adjudged to the primary creditor for money
owing from the garnishee, the day of ,
A.D. 18 \$

To V. W., Bailiff of the said Court.

You are hereby required to levy of the goods and chattels
of the garnishee, in the said County of (not exempt from

execution), \$ money owing from him to the primary debtor, and which has been adjudged to the primary creditor, to satisfy his said claim against the primary debtor, and your lawful fees and what you shall have done herein return with this writ within thirty days after the date hereof. (Conclude as in other executions.)

ATTACHMENT OF DEBTS.

148. EXECUTION AGAINST GARNISHEE FOR DEBT AND ALSO FOR COSTS UNDER SECTION 191.

(Title of Court and style of cause).

[Seal.]

Amount adjudged due from the primary debtor to the
primary creditor the day of A.D. 189 \$
for debt\$
For costs\$

Total sum\$

Amount adjudged to primary creditor for money
owing from the garnishee the day
of A. D. 189.....\$

To V. W., Bailiff of the said Court.

You are hereby required to levy of the goods and chattels of the garnishee (not exempt from execution) in the said County of \$ money owing from him to the primary debtor; and inasmuch as the said garnishee set up a defence to the said claim which he knew (or ought to have known), was untenable, the Judge ordered that he should pay the costs of the said proceeding, amounting to \$. You are therefore further required to levy of the said goods and chattels of the said garnishee (not exempt as aforesaid), the said sum of \$ to satisfy the said costs and your lawful fees, and what you shall have done herein, return with this writ, within 30 days after the date hereof.

Given under the seal of the Court the day
of 189 X. Y.,
Clerk.

149. EXECUTION WHERE CLAIM MADE BY SOME ONE
OTHER THAN THE PRIMARY CREDITOR OR
PRIMARY DEBTOR, TO DEBT SOUGHT TO BE
ATTACHED, AND JUDGE GIVES EFFECT
TO CLAIM UNDER SECTION 197 OF
ACT, WITH COSTS TO BE
PAID TO CLAIMANT.

(Insert title of Court and style of cause as in Form 144).

Whereas, upon this cause coming on to be tried, and upon its being proved that a debt was owing from the garnishee to the primary debtor, it appeared that G. H. of , claimed to be entitled to the said debt by assignment thereof or otherwise.

And whereas, the Judge at the sittings of this Court holden at in the County of upon the day of , A.D. 18 , having duly called the said G. H. and all other proper parties before him by summons, for the purpose, as provided by the 197th section of The Division Courts Act, enquired into and decided upon the said claim,* and allowed and gave effect to it, and judgment was given that the primary creditor (or as the case may be) do pay to the said G. H. the sum of \$ for his costs of so establishing his right to the said debt, which remains unpaid.

You are hereby required to levy of the goods and chattels of the said primary creditor (or as the case may be) in the said County of (not exempt from execution), the sum of \$ for the said costs of the said G. H. in so establishing his right to the said debt, together with your lawful fees.

(Proceed as in Form 132 and conclude).

150. EXECUTION WHERE CLAIM MADE BY SOME ONE
OTHER THAN THE PRIMARY CREDITOR OR PRIMARY
DEBTOR, TO DEBT SOUGHT TO BE ATTACHED,
AND JUDGE HOLDS THE CLAIM VOID AS
AGAINST THE PRIMARY CREDITOR
UNDER SECTION 197 OF ACT, WITH
COSTS TO BE PAID BY
CLAIMANT.

As in last form to asterisk,* and then proceed, and held the same void as against the primary creditor for being a fraud

upon creditors (or otherwise, stating the ground), and judgment was given that the said G. H. do pay to the primary creditor the sum of \$ for his costs of opposing the said claim, which remains unsatisfied.

You are hereby required to levy of the goods and chattels of the said G. H. in the said County of (not exempt from execution), the sum of \$ for the said costs of the said primary creditor in so opposing the said claim, together with your lawful fees.

(Proceed as in Form 132 and conclude).

151. FOR GARNISHEE'S COSTS.

No. , A.D. 18 . In the Division Court in the
County of

Between A. B., Primary Creditor,

[Seal.] and

C. D., Primary Debtor,

and

E. F., Garnishee.

To V. W., Bailiff of the said Court.

Whereas, at the sittings of this Court holden on the day of , 18 , at , it was adjudged that the garnishee was not indebted to the primary debtor, as claimed by the primary creditor, and judgment was given for the garnishee against the primary creditor, for \$ for his costs to be paid at a day now past, and the primary creditor has not paid the same.

You are hereby required to levy of the goods and chattels of the above-named primary creditor in the said County of (not exempt from execution) \$ for his said costs, together with the costs of this precept and your lawful fees in executing the same, and what you shall have done herein return with this writ within thirty days after the date hereof.
(Conclude as in other executions).

152. EXECUTION UNDER RULE 943 OF THE CONSOLIDATED
RULES OF THE SUPREME COURT OF JUDICATURE
OF ONTARIO.

In the Division Court in the County of
[Seal.] In the matter of the suit in the High Court of
Justice for Ontario (or County Court of the County of .)

Between A. B., Plaintiff,
and
C. D., Defendant,
and
E. F., Garnishee.

V. W., bailiff of the said Division Court.

You are hereby required to levy of the goods and chattels of
the above named garnishee, in the said county of (not
exempt from execution) \$ money owing from him to
the defendant, which has been attached towards satisfaction of
the judgment of the said Court in the said cause, and which, by
the order of the Judge of the County Court of the said county
of dated the day of A.D. 18 , the
said garnishee was ordered to pay to the plaintiff. (Conclude as
other execution).

153. EXECUTION AGAINST THE GOODS OF CLAIMANT
ON INTERPLEADER.

In the Division Court in the County of
No. A.D. 18 .

Between A. B., Plaintiff,
and
C. D., Defendant,
and
E. F., Claimant.

[Seal.]

Whereas on the day of , A.D. 18 , the plaintiff
duly recovered in said Court, holden in and for said Division,
judgment against the defendant for \$ debt, and \$
for costs of suit which remained unsatisfied (when the judgment
has been revived add the following words: and on the day

of _____, A.D. 18____, the said judgment was duly revived"), and the said moneys not being paid, an execution issued against the goods and chattels of the defendant, under which certain goods and chattels were seized [if the interpleader was in respect to goods attached, omit all the preceding after the word "claimant," and say in lieu thereof as follows:—"Whereas a writ of attachment was sued out of this Court (or issued by a Justice of the Peace) under which certain goods and chattels, etc., were seized and attached"], to which the above-named claimant made claim, and which claim came on to be heard and decided, upon interpleader summons, at a sitting of this Court, held on _____ at _____ and at such last-mentioned Court it was adjudged, touching the said claim, that the goods [or the goods, chattels and moneys, or proceeds of the goods, etc., (as the case may be) mentioned in the interpleader summons [if only for a part of the goods, etc., add the words—"hereafter mentioned, that is to say" (here enumerate them)]] were not the property of E. F. (the claimant); and it was ordered that the sum of \$ _____ the costs of that proceeding, should be paid by the said claimant to the clerk in _____ days, for the use of the said plaintiff; and whereas the said sum of \$ _____ has not been paid, pursuant to the said order, you are hereby required to levy of the goods and chattels of the claimant, in the said County of _____ (not exempt from execution) the said sum of \$ _____ and your lawful fees, so that you may have the same within thirty days after the date hereof, and pay the same over to the clerk of this Court for the plaintiff.

(Conclude as in other executions).

154. EXECUTION FOR COSTS.

(Title of Court and style of the cause).

[Seal.]

You are hereby required to levy of the goods and chattels of the defendant (or the plaintiff) [not exempt from execution] in the said county, the sum of \$ _____ for certain costs which by

the judgment of the said Court given [or by the order of the Judge of the said Court] dated the day of , 18 , were ordered to be paid by the said to the said , and which have been duly taxed and allowed at the said sum, together with your lawful fees. (Conclude as in other executions.)

155. EXECUTION FOR SALE OF PROPERTY SEIZED, BUT
UNSOLD FOR WANT OF BUYERS.

(Insert title of Court and style of cause.)

[Seal.]

Whereas, by an execution issued out of the said Court, dated the day of , 18 , you were lately required to levy of the goods and chattels of the defendant (or plaintiff) (not exempt from execution) in the said county, the sum of \$, and your lawful fees; so that you might have that money within thirty days from the said date, and pay the same over to the clerk of this Court for the plaintiff (or the defendant), and you at a day now past lately returned thereon, that by virtue thereof you had taken goods and chattels of the said defendant (or plaintiff) to the value of \$, which said goods and chattels remained in your hands for want of buyers. (Here state what the return was, if different in any respect from what is hereinbefore stated.)

Therefore you are required to expose for sale and sell the said goods and chattels so taken by you and every part thereof for the best price that can be gotten for the same, to satisfy the said execution.

In case the said goods and chattels do not sell for a sufficient sum to so satisfy the said execution and your lawful fees, you are required to levy of the other goods and chattels of the defendant (not exempt from execution) in the said county, the residue of the said sum and your lawful fees, so that you may have the same within thirty days, etc. (Conclude as in other executions.)

156. EXECUTION IN DIVISION COURT FOR ENFORCING
ORDER MADE ON APPEAL UNDER THE ACT
RESPECTING MASTERS AND SERVANTS,
R. S. O. CAP. 139.

In the Division Court in the County of

Between A. B., Appellant,

[Seal.]

and

C. D., Respondent.

Whereas, upon the complaint under oath of the said C. D., the servant of the said A. B., the said A. B. was, on the day of , 18 , before E. F., a Justice of the Peace for the said County of , ordered and adjudged (here set out the order of the justice. If for payment of wages state amount and when payable).

And, whereas, the said A. B., having duly appealed against the said order or conviction to the said Division Court of the said County of , and the said appeal having been heard before the Judge of the said Court at a sittings thereof held on the day of , 18 .

It was thereupon ordered and adjudged by the said Court that the said appeal should be dismissed and that the said order or conviction should be affirmed (or as the case may be), and that the said A. B. should forthwith pay to the said C. D. the sum of \$ being the amount of the said wages and costs so ordered to be paid by the said justice, together with \$ being the costs of and incidental to the said appeal as allowed and taxed. And, whereas, the said sums so ordered to be paid remain unsatisfied.

You are therefore hereby required to levy of the goods and chattels of the said A. B., in the said County of (not exempt from execution) the said moneys, amounting together to the sum of \$ and your lawful fees; so that you may have the same moneys thirty days after the date hereof, and to pay over the same to the clerk of this Court for the said D. C.

Given under the seal of the Court this day of , 18 .

To V. W.,)
Bailliff of the said Court.)

X. Y.,
Clerk.

157. EXECUTION AGAINST MARRIED WOMAN.

No. A.D. 18 ,

(Title of Court and style of cause.)

[Seal.]

Whereas, on the day of A.D. 18 the plaintiff duly recovered in the said Court holden in and for said division judgment for \$ and costs, payable out of the separate property of the defendant A. B., which remains unsatisfied. You are hereby required of the goods and chattels being the separate property of the defendant A. B. (not subject to any restriction against anticipation unless by reason of the Married Women's Property Act, the property shall be liable to execution notwithstanding such restriction) in the said county (not exempt from execution) the said moneys, amounting together to the sum of \$ and your lawful fees (conclude as in other forms of execution).

158. WARRANT TO LEVY A FINE UPON A WITNESS IN COURT WHO REFUSES TO GIVE EVIDENCE.

Whereas, H. H. being before this Court at a sittings thereof, and called upon to give evidence in this cause, did wilfully refuse to be sworn and give evidence without alleging any just ground for such refusal (or after being sworn refused to give evidence or to produce, as the case may be).

Whereupon it was adjudged and ordered by the Court that the said H. H. should forthwith (or on the day of A.D. 18 (as the case may be) pay to the clerk of this Court a fine of \$, for such neglect (or refusal). And whereas the said H. H. hath not made such payment: These are therefore (as before or as often before) to command you, forthwith to make and levy by distress and sale of the goods and chattels of the said H. H. (not exempt from execution) the said fines and costs, amounting together to the sum of \$, and your lawful fees; so that you may have the same within thirty days after the date hereof, and to pay the same over to the clerk of the Court.

Given under the seal of the Court this day of 18 .

By order of the Judge,

X — Y —

Clerk.

To V. W., Bailiff of the said Court.

Fine\$

Costs

Execution

Levy the sum of

And your own lawful fees

159. WARRANT TO LEVY FINE UPON WITNESS WHO
REFUSED TO BE SWORN UPON HIS ATTENDANCE
UPON SUBPŒNA.

(Insert title of Court and style of cause).

Whereas, at a sitting of this Court holden on at
in the said County, H. H. of (here describe the witness
as in the subpœna) was duly summoned to appear as a witness
in this action to give his evidence on the part of the plaintiff (or
defendant) and at the time of his being so summoned, payment
(or a tender of payment of his necessary and reasonable ex-
penses for such attendance was duly made to him according to
law) and having appeared did then and there wilfully refuse to be
sworn and give his evidence in this action (or to produce as the
case may be).

Whereupon it was adjudged, etc. (proceed as in the two next
preceding forms, after the word "adjudged" to the end).

160. WARRANT TO LEVY A FINE ON A WITNESS FOR DIS-
OBEDIENCE OF A SUBPŒNA.

(Insert Title of Court and style of cause.)

Whereas, by a subpœna duly issued under the seal of this
Court in this cause (bearing date the day of A.D.
18) one H. H. of (here name and describe the person
as set forth in the subpœna) was duly summoned to appear as a
witness to give his evidence in this action on the part of the

plaintiff (or defendant) at a sitting of this Court, held at in the said county, on the day of A.D. 18 (and to produce then and there as the case may be). And whereas, it has been duly shewn that payment (or tender of payment) of his reasonable expenses was duly made to the said H. H. at the time of such service. And whereas, the said H. H. did not appear to give such evidence (or did not produce before the said, as the case may be), in obedience to the said subpoena, but wholly failed therein. And whereas, the plaintiff (or the defendant) made application to this said Court on the day of , A.D. 18 that the said H. H. should be fined for such neglect and disobedience by this said Court. And whereas, notice of the said application was on the day of A.D. 18 , duly served upon the said H. H. And afterwards on the day of A.D. 18 (being the day named in such notice), the plaintiff (or defendant) and the said H. H. appeared in furtherance thereof, and no cause or excuse* being made to appear to the satisfaction of the Court, for such non-attendance (or for not producing the said, as the case may be) and neglect (or the said H. H. made default and did not appear upon the said notice to shew cause to the said application or against his being fined for such neglect, and upon reading the affidavits and papers filed upon the said application shewing due service of the said notice) and no cause or excuse (proceed from the asterisk* in the next preceding paragraph to the end of it).

Whereupon it was adjudged (proceed as in the next preceding forms from the word "adjudged" to the end).

161. FORM OF EXECUTION IN DETINUE.

(Title of Court and style of cause).

Whereas, upon hearing this action of detinue at a Court holden at in and for the said division on the day of A.D. 18 , it was adjudged that the plaintiff do recover and that the defendant do deliver to the plaintiff, the deeds (or the goods, or chattels (as the case may be) stating particulars thereof) forthwith, and also that the defendant should pay to the plaintiff the sum of \$, the value of the said goods and chattels, in case the same are not returned upon your demanding the same, and also the sum of \$ for costs of

said plaintiff, and if the defendant does not return to you the said deeds (or the said goods and chattels) forthwith, or pay the said damages and costs upon demand, you are therefore required and ordered that without delay, you cause the same to be returned to the plaintiff, and that if the said deeds, goods or chattels cannot be found in the said county, then that you levy of the goods and chattels of the defendant in the said county (not exempt from execution) the said moneys, amounting altogether to the sum of \$ and your lawful fees, so that you may have the same within 30 days after the date thereof, and pay the same over to the clerk of this Court for the plaintiff.

Given under the seal of the Court this day of A.D. 18 .
To V. W., Bailiff of the said Court.

X—— Y——,
Clerk.

(Add memo. as in Form 132).

162. WARRANT OF COMMITMENT IN DEFAULT OF APPEARANCE.

In the Division Court in the County of
No. , A.D. 18 .

[Seal.]

Between A. B., Plaintiff,
and
C. D., Defendant.

To V. W., Bailiff of the said Court, and to all constables and peace officers of the County of and to the gaoler of the common gaol of the said County of

Whereas, at the sittings of this Court (or of the Division Court for, etc.), holden at , on the day of 18 , the plaintiff, by the judgment of the said Court, in a certain suit wherein the Court had jurisdiction, recovered against the defendant the sum of \$, for his debt (or damages) and costs of suit, which were ordered to be paid at a day now past:—And whereas, the defendant, not having made such payment upon application of the plaintiff, a summons was duly issued from and out of this Court, against the defendant, by which summons the defendant was required to appear at the sittings of this Court,

holden at on, etc., to answer such questions as might be put to him, touching (set out as in the summons)*:—And whereas, it was duly proved on oath, at the said last mentioned sittings of this Court, that the defendant was personally served with the said summons:—And whereas, the defendant did not attend, as required by such summons, nor allege any sufficient cause for not so attending:—And whereas it appeared to the satisfaction of the Judge that such non-attendance was wilful (or, “whereas, the defendant has failed to attend after being twice so summoned.”)

And thereupon it was ordered by the Judge of this Court that the defendant should be committed for the term of days, to the common gaol of the said County, according to the form of the statute in that behalf, or until he should be discharged by due course of law:—These are therefore to require you, the said bailiff and others, to take the defendant, and to deliver him to the gaoler of the common gaol of the said county: And you, the said gaoler, are hereby required to receive the defendant, and him safely to keep in the said common gaol for the term of days from the arrest under this warrant, or until he shall be sooner discharged by due course of law, according to the provisions of the Act of Parliament in that behalf; for which this shall be your sufficient warrant.

Given under the seal of the Court this day of
A.D. 18 .

X— Y—, Clerk.

Debt and costs up to the time of
the delivering of this warrant
for execution\$

162a. WARRANT OF COMMITMENT AFTER EXAMINATION.

In the Division Court in the County of
(As in last Form, down to the asterisk*, conclude as follows):

And whereas, the defendant having duly appeared at the said Court pursuant to the said summons, was examined touching the said matters: And whereas, it appeared, on such examination that [here insert the particular ground of commitment in the language used in the statute, e.g., “C. D., the defendant, incurred the debt (or liability), the subject of this action, under false pretences” (or by means of fraud or breach of trust.)]

And thereupon it was ordered by the said Judge that the defendant should be committed for the term of _____ days to the common gaol of the said County, according to the form of the statute in that behalf, or until he should be discharged by due course of law.

These are, therefore, to require you, the said bailiff, and others, to take the said defendant, and to deliver him to the gaoler of the common gaol of the said County; and you, the said gaoler, are hereby required to receive the defendant, and him safely keep in the said common gaol, for the term of _____ days from the arrest under this warrant, or until he shall be sooner discharged by due course of law, according to the provisions of the Act of Parliament in that behalf; for which this shall be your sufficient warrant.

Given under the seal of the Court, this _____ day of _____
A.D. 189 _____

X _____ Y _____
Clerk.

Debt and costs up to the time of the delivery of warrant of execution \$ _____

163. WARRANT OF COMMITMENT FOR CONTEMPT IN OPEN COURT.

In the _____ Division Court in the County of _____

To V. W. bailiff of the said Court, and to all constables and peace officers of the County of _____, and to the gaoler of the common gaol of the said County of _____

Whereas at the sittings of this Court holden on _____ at _____ it was adjudged that E. F. did, then and there in open Court wilfully insult me _____, Judge (or deputy or acting Judge) of the said Court [or did, in view of the Court, wilfully insult _____, clerk (or bailiff) of the said Court, during his attendance at such Court (or did unlawfully interrupt the proceedings of the said Court)]; and it was ordered, that the said E. F. should immediately pay a fine of \$ _____, for such offence, and in default of payment, be committed to the common gaol of the County of _____ for _____ days; and whereas the said E. F. did not pay the said fine, in obedience to the said order: These are therefore to require you, the said bailiff and others, to take the said

E. F., if he shall be found within the said County of _____, and deliver him to the said gaoler of the common gaol of the said County of _____; and you, the said gaoler, are hereby required to receive the said E. F., and him safely keep in the common gaol aforesaid, for the term of _____ days from the arrest under this warrant, unless the said fine and costs, the costs amounting to \$ _____, and also the expenses attending the commitment, amounting to the sum of \$ _____, be sooner paid.

Given under my hand and seal this _____ of _____, 18 _____.
[L.S.]
Judge.

Sealed with the seal of the Court, [L.S.]

X. Y.,
Clerk.

TRANSCRIPTS.

164. TRANSCRIPT TO ANOTHER DIVISION COURT OF JUDGMENT ON SPECIAL SUMMONS.

In the _____ Division Court in the County of _____
Between A——— B———, Plaintiff,
and
C——— D———, Defendant.

On the _____ day of _____, 18 ____, a "Special Seal. Summons" requiring the defendant to answer the plaintiff's claim for a debt or money demand, amounting to \$ _____, was issued out of this Court in this cause, with the particulars of the plaintiff's claim thereto attached; on the _____ day of _____, 18 ____, the defendant was duly served with a copy of the said summons, and particulars of claim, and the defendant did not leave with the clerk a notice, as required by the statute in that behalf, that he disputed the plaintiff's claim, or any part thereof (or as the case may be), the said summons and particulars, with an affidavit of the due service of each, having been filed, final judgment was entered on the _____ day of _____, A.D. 18 ____, by the clerk, as follows: (here copy minute of judgment, and if judgment revived state the fact as in Form 164b). An execution issued against the goods of the defendant

on the day of 18 , and was returned on the
day of 18 , nulla bona (or as the case may be.)

Pursuant to the provisions of the Division Courts Acts, I,
X— Y—, clerk of the said Court, do certify that the above
transcript is correct, and duly taken from the procedure book of
the said Court, and that judgment in the above cause was re-
covered at the date above stated, viz.: the day of
18 ; and further, that the amount unpaid on said judgment is
\$, as stated below.

Given under the seal of the said Court the day of
A.D. 18 .

Amount of judgment.....\$

Debt

Costs

Total\$ X— Y—, Clerk

Additional costs.....

do interest

Total\$

Paid

Amount due\$

To R— S—, clerk of Division Court
County of .

164a. TRANSCRIPT TO COUNTY COURT OF JUDGMENT ON SPECIAL SUMMONS.

In the Division Court in the County of
Between A— B—, Plaintiff,
and
C— D—, Defendant.

The following proceedings were had:--

On the day of 18 , a special sum-
mons requiring the defendant to answer the plaintiff's
claim for a debt or money demand, amounting to \$,
was issued out of this Court in this cause, according to the
statute in that behalf, with the particulars of the plaintiff's claim
thereto attached; on the day of , 18 , the de-
fendant was personally served with a copy of the said summons

(Conclude as in last form omitting the address to the clerk).

164b. TRANSCRIPT OF JUDGMENT ON ORDINARY SUMMONS
FROM ONE DIVISION COURT TO ANOTHER.

Between A——— B———, Plaintiff,
[Seal.] and
C——— D———, Defendant.

Amount of judgment.		Judgment for plaintiff for \$	debt.
Debt, \$		and \$	costs of suit; execution issued
Costs, \$		on the	day of
		18	, and returned on the
		of	day
	\$		, A.D. 18 (here state the
Additional		return). (If the judgment was revived,	
costs, \$		add the following words: "and on	
		the	day of
			A.D. 18 , the
Total, \$		said judgment was duly revived.") Pur-	
Amount		suant to the provisions of "The	
paid \$		Division Courts Acts."	
18		I, X——— Y———, Clerk of the said	
18		Division Court, do certify that the above	
Total paid, \$		transcript is correct, and duly taken from	
		the Procedure Book of the said Court,	
Amt. due, \$		and that judgment in the above cause	
		was recovered at the date above stated,	
		viz.:	

the day of A.D. 18 , and further, that the amount unpaid on said judgment is \$, as stated in the margin hereof.

Given under the seal of the said Court this day of ,
A.D. 18 .

X——— Y———,
Clerk.

To ,
Clerk of the
Division Court in the County of .

INTERPLEADER.

165. APPLICATION OF BAILIFF FOR INTERPLEADER.

(Insert title of Court and style of cause).

By virtue of a writ of execution (or "attachment" in this cause, dated the day of , 18 , from this Court, I did, on the day of , 18 , seize and take in execution (specify goods, chattels, etc., seized) as the property of the defendant. E. F., of the township of , etc., now claims the same as his property (or now claims the said and as his property), and that the value thereof is \$, you will therefore be pleased to issue an interpleader summons to the plaintiff and to the said E. F., according to the statute in that behalf.

Dated , 18 .

To the clerk of the said Court.

V——— W———,
Bailiff.

166. LANDLORD'S CLAIM FOR RENT UNDER SECTION 269.

Whereas, I have been informed that you have seized the goods of C. D. of , on the premises at , to satisfy a certain judgment of the Division Court in against the said C. D., at the suit of A. B.; I hereby give you notice that I am the landlord of the said premises, and that I claim \$ for rent now in arrear, being for one (or as the

case may be), and I require you to pay the same to me before you apply the proceeds of the sale of said goods or any part thereof to satisfy the said judgment.

Dated, etc.

E. F.,

To V. W.,

Landlord of said Tenement.

Bailiff of

etc.

167. SUMMONS IN INTERPLEADER.

In the Division Court in the County of
No. , A.D. 18 .

[Seal.]

Between Henry Bray, Plaintiff,

and

John Nokes, Defendant, *

and

Robert Roy, Claimant.

You, the said Robert Roy, are hereby summoned to appear at the sitting of this Court to be holden on Friday, the first day of November, A.D. 18 , at the hour of ten o'clock in the forenoon, at the township hall, in the village of Markham, in the said County, touching a claim made by you to certain goods and chattels and cattle (or moneys, or securities, as the case may be) viz.:—(Here specify the goods, etc., claimed), seized and taken in execution (or attached) under process issued out of this Court in this action (or by attachment issued by G. R., a Justice of the Peace), at which time and place you will be required to maintain your claim to the said goods and chattels, and in default of your then establishing such claim, the said goods and chattels will be sold (or the said moneys be paid and delivered over) according to the urgency of the said process.

And take notice that you are required, within five days after the day of service hereof upon you, to deliver or leave at the clerk's office, particulars of the goods and chattels (as the case may be), so claimed by you and the grounds of your claim.

And you, the said Henry Bray, are also hereby summoned to appear at the said sitting of the said Court, and maintain your right to have the said goods, etc. (or as the case may be) sold to satisfy your claim.

And all the said parties are required to take notice, that every claim will, at the said sitting of the said Court, be adjudicated upon.

Given under the seal of the Court, this day of
January, A.D. 18 .

R. ROE.

Clerk.

NOTICE TO THE PARTIES.

Where, under sub-section 3 of section 269 of the Act, the claimant to goods taken under process, claims damages from the creditor, or from the bailiff, or in respect of the seizure of the property, he shall in the particulars of his claim to the goods state the amount he claims for damages, and the grounds upon which he claims such damages.

Where a creditor claims damages against a bailiff arising out of the execution of any process, he shall, five clear days before the day upon which the interpleader is to be tried, deliver to the bailiff a notice of such claim, stating the grounds and amount of such claim.

Add also memorandum, Form 51.

168. PARTICULARS OF CLAIM IN INTERPLEADER.

In the First Division Court in the County of Brant.

Between Aaron Barr, Plaintiff,

and

Colin Duffy, Defendant.

Edgar French, Claimant.

To whom it may concern:—

Edgar French, of , claims as his property the following goods and chattels (or moneys, etc.), seized and taken in execution (or attached) as it is alleged, namely (specify the goods and chattels, or chattels or moneys, etc., claimed) and the grounds of claim are (set forth in ordinary language the particulars, on which the claim is grounded, as how acquired, from whom, when, and the consideration paid or to be paid and when), and this the said Edgar French will maintain and prove.

E. French.

Dated this day of , 18 .

N.B.—If any action for the seizure has been commenced, state in what Court and how the action stands.

169. ADJUDICATION ON INTERPLEADER.

Adjudged, that the goods [or the goods, chattels and moneys, or proceeds of the goods etc. (as the case may be)] mentioned in the interpleader summons [if only for a part of the goods, etc., add the words " hereafter mentioned, that is to say (here enumerate them)] are (or are not) the property of E. F. (the claimant), or that rent to the amount of \$ is due to E. F. (the claimant); Ordered that \$ the costs of this proceeding be paid by (here insert such order as to costs, or the subject in dispute, if any, as the Judge shall have made) in days.

WHERE DAMAGES CLAIMED OR ADJUDGED.

It is also adjudged that the said E. F. (the claimant) has sustained damages arising, or capable of arising out of the execution of the process by which said goods (or as the case may be) were taken in execution (or attached) to the amount of \$, and that the same is recoverable from and payable by A. B. (the execution creditor or L. M., the bailiff), to the said E. F. (the claimant), and which said sum is hereby ordered to be paid forthwith (or as the case may be).

170. WHERE BOTH GOODS AND DAMAGES ARE CLAIMED
AND THE CLAIM TO NEITHER IS ESTABLISHED.

Adjudged, touching the claim of E. F. to certain goods, etc. (as in the preceding form) and for damages arising out of the said execution, referred to in the interpleader summons, and which E. F. claims against (the execution creditor) and the bailiff of the Court that the said goods, etc. (or moneys) or part thereof (describe the part) are the property of (execution debtor), and that the said E. F. is not entitled to receive any damages from either (the execution creditor) or the said bailiff; Ordered that the costs, etc. (as in the preceding form).

171. WHERE BOTH GOODS AND DAMAGES ARE CLAIMED,
AND THE CLAIM TO BOTH IS ESTABLISHED.

Adjudged, touching the claim of E. F. to certain goods, etc. (as in Form 169), and for damages arising (same as in Form 170),

that the said goods and chattels (or moneys) or part thereof (specifying them), are the property of E. F., and that E. F. is entitled to recover the sum of \$ for damages arising out of the said execution against the bailiff of this Court; Ordered that the bailiff of this Court do pay the said E. F. the sum of \$ for damages, and the sum of \$ for costs, and the said A. B. (the execution creditor) to pay the said E. F. the sum of \$ for costs.

172. WHERE BOTH GOODS AND DAMAGES ARE CLAIMED,
AND MONEY IS PAID INTO COURT, IN RESPECT OF
THE LATTER, AND THE CLAIM TO THE GOODS
IS ESTABLISHED AND THE MONEY PAID
INTO COURT IS FOUND TO BE
SUFFICIENT TO SATISFY
THE DAMAGES.

It is adjudged (proceed here as in Form 169), and for damages arising out of the said execution and which E. F. claimed against E. G., the bailiff of this Court, and in respect of which he hath paid into Court the sum of \$ that the said goods and chattels, etc. (or moneys, etc.), or part thereof (specifying them or it) are the property of E. F., but that the said sum paid into Court is sufficient to satisfy all damages arising out of the said execution; Ordered that A. B. (the execution creditor) do pay to the said E. F. for her costs, and that E. F. do pay to the said E. G., the said bailiff, the sum of \$ for her costs. (Conclude as in Form 169).

[The foregoing Form 172 may be adapted to the case where money is paid into Court in respect of damages, or the claim to the goods is established and the money paid into Court is adjudged insufficient); Ordered that A. B. (the execution creditor) do pay the sum of \$ for costs, and that E. G., the said bailiff, do pay the said E. F. the further sum of \$ for damages, and also the sum of \$ for costs. (Conclude as in Form 169 ante.)]

173. ADJUDICATION FOR DAMAGES, IN A CASE WHERE
THE EXECUTION CREDITOR RECOVERS AGAINST
THE BAILIFF, WHO PAYS MONEY INTO
COURT

Adjudged, touching the claim, etc. (as in preceding forms) and in respect of damages arising out of an execution in this action, in which process given from the Court at the instance of the said A. B. (the execution creditor) directing the said bailiff to this Court to levy the sum of \$ of and from the goods and chattels of C. D. (the execution debtor), and in respect of which damages E. G., the bailiff of this Court, and in respect of which damages the said bailiff hath paid into Court the sum of \$, that the sum paid into Court is not sufficient to satisfy all damages arising out of the said execution [or that the sum paid into Court is not sufficient to satisfy the damages arising out of the said execution and that the said A. B. (the execution creditor) is entitled to recover the further sum of \$ for damages from the said E. G., the said bailiff]; Ordered that the said A. B. do pay the said E. G. the sum of \$ for costs (or that said E. G. do pay the said A. B. the further sum of \$ for damages, and also \$ for costs). (Conclude as in Form 169).

174. WHERE BOTH GOODS AND DAMAGES ARE CLAIMED,
AND THE CLAIM TO THE GOODS IS, BUT THAT TO
DAMAGE IS NOT ESTABLISHED.

Adjudged, touching the claim of E. F. to certain goods, etc. (as in Form 169) and for damages, etc. (as in Form 170), but that the said E. F. is not entitled to recover any damages from either the said A. B. (the execution creditor) or the said bailiff; Ordered that A. B. (the execution creditor) do pay to the said E. F. the sum of \$ for the costs, and that the said E. F. do pay to the said bailiff the sum of \$ for his costs of defending the said claim for damages. (Conclude as in Form 169).

175. WHERE BOTH GOODS AND DAMAGES ARE CLAIMED,
AND THE CLAIM TO THE GOODS IS NOT, BUT THE
CLAIM TO DAMAGES IS ESTABLISHED.

Adjudged, touching the claim of E. F., etc. (as in preceding Form 169) that the said goods and chattels, etc. (as in preceding

Form 169) are the property of the said C. D. (the execution debtor), and that the said E. F. (the claimant) is entitled to recover \$ for damages from the said bailiff of this Court, but not any damages from A. B. (the execution creditor); Ordered that the said E. F. do pay to the said A. B. the sum of \$ for his costs, and that the said bailiff of this Court do pay to the said E. F. the sum of \$ for damages, and \$ for costs. (Conclude as in Form 169).

(From the foregoing, forms may easily be framed to suit other circumstances, as where the execution creditor makes claim for damages from the bailiff; and the claim to damages is established, or where it is not established).

EXAMINATIONS, NEW TRIALS AND REFERENCES.

176. NOTICE OF APPLICATION FOR ORDER TO EXAMINE SICK, AGED OR INFIRM WITNESS.

(Insert title of Court and style of cause).

Take notice, that a motion will be made on behalf of the above-named plaintiff (or defendant) to the Judge of the Court, at his Chambers in the Court House, in the City of Hamilton (or as the case may be), on , the day of , 18 , at o'clock in the forenoon, or so soon thereafter as the motion can be heard, for an order under the 137th section of the Division Courts Act, to examine E. F., etc., a material and necessary witness in this cause for the plaintiff (or defendant), under the provisions of said section, and that on such motion will be read the affidavits of true copies of which are hereto annexed.

Dated the day of 18 .

(Signature of the party, his solicitor or agent).

To

(Name of party to whom notice given).

177. ORDER FOR EXAMINATION OF SICK, AGED OR INFIRM
WITNESS, WHERE BOTH PARTIES APPEAR.

(Insert title of Court and style of cause).

Upon application of the above-named plaintiff (or defendant) in this cause, and upon reading the affidavit of _____, filed herein, notice of application and affidavit of service thereof, and a copy of said affidavit of the said _____, on the defendant (or plaintiff) in this cause, and upon hearing the parties by their solicitors (or agents).

It is ordered that G. H., of, etc., do take evidence on oath of E. F., of, etc., a witness on behalf of the plaintiff (or defendant), pursuant to the 137th section of the Division Courts Act, at such time and place as the said G. H. may by writing appoint, and shall reduce such evidence to writing, and cause the same to be signed by the said E. F., and when so signed shall duly transmit the same to the clerk of this Court.

It is further ordered, that the defendant (or plaintiff), his solicitor or agent, shall have two days' notice of the time and place of such examination; that the costs of this order and the costs of the examiner be reserved until the trial of this cause. (Any other terms may be here inserted.)

Date _____

Judge.

178. ORDER FOR NEW TRIAL.

In the _____ Division Court in the County of _____

Between A— B—, Plaintiff,

and

C— D—, Defendant.

It is ordered, that the judgment rendered in this cause, and all subsequent proceedings, be set aside, and a new trial be had between the parties on (set out the terms and conditions, if any, on which the order is made).

Dated _____

, 18 .

Judge.

179. FORM OF ORDER FOR JUDGMENT UNDER SECTION 146.

(Title of Court and style of cause.)

At the sittings of this Court held on the day of
189 , at , in the said Division, this case came on to be heard,
and judgment was rendered for the for \$.

And afterwards application having been made by for
a new trial therein—and I, having since considered the facts of
the case, and the merits of the said application, do hereby, in-
stead of granting a new trial, herein pronounce as my judgment
that which in my opinion ought to have been pronounced at the
trial, and I do now order judgment to be entered as follows:—

(Here set forth the nature of the order as in Form 91).

180. FORM OF ENTRY IN PROCEDURE BOOK UPON JUDGE'S
ORDER UNDER SECTION 146.

(After entering the judgment first rendered proceed as follows:—)

The defendant (or plaintiff, as the case may be) made applica-
tion for a new trial, and the Judge, instead of granting the same,
ordered that judgment be entered as follows:—

It is adjudged, etc. (here set forth that part of the Judge's
order which directs how judgment is to be entered).

181. ORDER OF REFERENCE.

In the Division Court in the County of
Between A. B., Plaintiff,
[Seal.] and
C. D., Defendant.

By consent of the plaintiff and defendant (or their solicitors)
(or as the case may be) given in open Court (or produced in
writing to the Court) it is ordered that all matters in difference
in this cause (and if consented to, add, "and all other matters
within the jurisdiction of this Court in difference between the
said parties") be referred to the award of (if there be 3 arbitra-
tors, here insert, or of any two of them) so as said award
be made in writing, ready to be delivered to the parties entitled

to the same, on or before the day of , or such further day as the said arbitrator may by writing under his hand, endorsed hereon, enlarge the time for making his said award, and that the said award may be entered as the judgment in this cause (add any terms that the Judge may prescribe, or the parties may agree upon such as in Form 185).

Dated this day of , 18 .

N. Y., Clerk.

182. APPOINTMENT OF THIRD ARBITRATOR OR UMPIRE
TO BE ENDORSED.

We hereby appoint _____, of, etc., as a third arbitrator with us for determining the matters in dispute within referred to us.

Or,—We hereby appoint _____, of, etc., as an umpire as to certain differences of opinion which have arisen between us as arbitrators of the matters within referred.

183. APPOINTMENT FOR MEETING ON REFERENCE

In the, etc. (state title of Court and style of cause).

B.) I appoint the day of next, at the
v.) hour of , at , for proceeding on this
D.) reference.

Arbitrator.

To (both parties).

184. ENLARGEMENT TO BE ENDORSED.

I enlarge the time for making my award respecting the matters referred to me by the within order of reference, until the day of , 18 .

Arbitrator.

Dated, etc.

185. ORDER OF REFERENCE CONTAINING SPECIAL
CLAUSES.

(Commence as in Form 181.)

[Seal.]

1. The said arbitrator to have power, by writing, signed by him, from time to time to enlarge the time for making his award.
2. That if either of the parties be dead before the making of the award, that the same may be afterwards delivered to their respective personal representatives who shall require the same.
3. That the costs of the reference and award shall be at the discretion of the said arbitrator (or as the case may be).
4. That the arbitrator shall be at liberty to order and determine what he shall think fit to be done by either of the parties respecting the matters referred.
5. That the witnesses and parties shall be examined by the arbitrator on oath.
6. That the arbitrator shall be at liberty to proceed ex parte in case either party, after reasonable notice, shall at any time neglect or refuse to attend on the reference.
7. That the parties respectively shall produce before the arbitrator all books, deeds, papers, accounts, vouchers, writings and documents within their possession or control, which the arbitrator may require and call for as in his judgment relating to the matter referred.
8. That neither party shall wilfully and wrongly do or cause to be done any act to delay or prevent the arbitrator from making his award.
9. That neither of said parties shall bring or prosecute any action against the arbitrator concerning the matters referred.
10. That if either party shall, by affected delay or otherwise, wilfully prevent the arbitrator from proceeding in the reference, or from making his award, he shall pay such costs to the other as the arbitrator shall think reasonable.
11. The said parties jointly and severally agree with the said arbitrator, in consideration of his taking upon himself the burthen of the reference, to pay him his reasonable charges for the arbitration and award.

(Here add any other terms that the Judge may prescribe or the parties may agree upon).

Given under the seal of the Court this day of , 18 .

R. ROE, Clerk.

186. AWARD.

After hearing and considering the proofs laid before me (or us) in the matter of the within reference, and in full determination of the matters to me (or us) referred, I (or we) do award that the within named A. B. is entitled to recover from the within named C. D. the sum of _____, together with the costs of this suit, and also _____ the costs of this reference (or as the case may be), and that the same shall be paid by the said C. D. within _____ days, and that judgment be entered in the within mentioned case accordingly.

Dated this _____ day of _____, 18 ____.

Witness _____

Arbitrator.

(Add affidavit of execution, Form 35).

187. BOND ON SUPERSEDEAS TO WARRANT OF ATTACHMENT.

(Insert title of Court and style of cause).

Know all men by these presents, that we, C. D. of [insert place of residence and addition], the above defendant, E. F. of, etc., and G. H. of, etc., are, and each of us is, jointly and severally held and firmly bound to A. B., of, etc., the above plaintiff, in the sum of _____, to be paid to the said plaintiff, his certain attorney, executors, administrators, and assigns, for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, and each and every of us binds himself, his heirs, executors and administrators firmly by these presents.

Sealed with our respective seals, and dated the _____ day of _____ 18 ____.

Whereas the above-named plaintiff hath sued out a warrant of attachment against the goods and chattels of the defendant, for the sum of _____ and under and by virtue of the said attachment, certain goods and chattels of the defendant, to wit: (specify property seized) have been seized and attached: and the defendant desires that the said warrant be superseded, and the property, so attached, restored to him under the provisions of the 259th section of the Division Courts Act.

Now the condition of this obligation is such, that if the said defendant, his heirs, executors or administrators, do and shall, in the event of the claim, in the said cause being proved, and judgment being recovered thereon, as in other cases, where proceedings have been commenced against the person, pay the same, or pay the value of the said property, so taken and seized as aforesaid, to the plaintiff, his executors or administrators, or produce such authority, whenever thereto required, to satisfy such judgment: Then this obligation to be void—else to remain in full force and virtue.

Scaled and delivered
in presence of

C. D. (U.S.).
G. H. (U.S.).
E. F. (U.S.).

(Add affidavit of execution, Form 35).

188. BOND ON SEIZURE OR SALE OF PERISHABLE PROPERTY.

In the Division Court in the County of
Between A. B., Plaintiff,
and
C. D., Defendant.

Know all men by these presents, that we, A. B., of
(insert place of residence and addition), the above-named plaintiff,
E. F., of, etc., and G. H., of, etc., are, and each of us is, jointly and
severally held and firmly bound to C. D., the above-named de-
fendant, in the sum of \$ (double value of the appraised
property) to be paid to the defendant, his certain attorney,
executors, administrators, and assigns, for which payment, well
and truly to be made, we bind ourselves, our heirs, executors and
administrators, and each, and every of us, binds himself, his
heirs, executors and administrators, firmly by these presents.

Scaled with our respective seals, and dated this day
of A.D. 18 .

Whereas the above-named plaintiff hath sued out of the said
Court (or from a Justice of the Peace) a warrant of attachment
against the goods and chattels of the defendant, and hath request-
ed that certain perishable property, to wit (specify property)
belonging to the defendant, may be seized, and forthwith exposed

and sold, under and by virtue of the said warrant of attachment [or whereas certain perishable property, to wit , belonging to the defendant, hath been seized under and by virtue of a warrant of attachment issued out of the said Court (or by a Justice of the Peace) in the above-named cause, and hath been duly appraised and valued at the sum of \$ and is now in the hands of the clerk of the said Court; and whereas the plaintiff hath requested the said clerk to expose and sell the said goods and chattels as perishable property] according to the form of the statute in that behalf.

Now the condition of this obligation is such, that if the said plaintiff, his heirs, executors or administrators, do repay to the said defendant, his executors, or administrators, the value of the said goods and chattels, together with all costs and damages, that may be incurred in consequence of the seizure and sale thereof, in case judgment be not obtained by the plaintiff, according to the Division Courts Act: Then this obligation to be void—else to remain in full force and virtue.

Sealed and delivered
in presence of

1
1

A. B. [L.S.]
E. F. [L.S.]
G. H. [L.S.]

139. BOND FOR SECURITY FOR COSTS, WHERE PLAINTIFF
OUT OF ONTARIO.

(Title of Court and style of cause.)

Know all men by these presents—(proceed with penal part of bond as in ordinary cases).

Whereas, an action (or plaint) was upon the day of A.D. 18 , entered by the above-named plaintiff against the above-named G. H. in the First Division Court of the County of Brant.

And whereas, it has been made to appear that the said plaintiff does not reside in the Province, and it has been ordered that proceedings herein shall be stayed until security for costs of the defendant shall have been given to the satisfaction of the clerk of the said Court, or until deposit of a sufficient sum to meet and pay the said costs shall have been made with the clerk of the said Court; and no such deposit having been made.

And whereas, the said plaintiff and the above bounden C. D. and E. F. as sureties for the said plaintiff, have agreed to give such security pursuant to the said order by entering into this obligation with the condition hereunder written: and this security has been approved by the clerk of the said Court.

Now, the condition of this obligation is such that if the said plaintiff, or any plaintiff substituted in his stead, discontinues, become nonsuit in the said action, or in case the said action is referred to arbitration, and an award is made against the said plaintiff, or any substituted plaintiff therein, showing that he is not entitled to recover therein, or if the said defendant or any substituted defendant, obtain judgment or verdict, or award, therein then or in either of the said cases, of the above bounden A. B., C. D. and E. F., or either of them, their or either of their heirs, executors or administrators, do pay or cause to be paid to the said defendant, his executors, administrators or assigns, his or their costs to be taxed in the said action, then this obligation to be void and of no effect, or otherwise to remain in full force and virtue.

Sealed with our seals and dated this day of , A.D. 18

[A. B. [Seal.]

Signed, sealed and delivered in presence of C. D. [Seal.]

[E. F. [Seal.]

CONSENTS AND AGREEMENTS.

190. CONSENT TO AN APPEAL UNDER SECTION 148 OF THE ACT, SUB-SECTION 2.

(Insert title of Court and style of cause.)

We hereby consent that this cause may be entered, heard and disposed of in the Court of Appeal for Ontario pursuant to the provisions of section 148 of the Division Courts Act.

Dated, etc.

(Signed by the parties, their counsel or solicitors.)

191. CONSENT TO TRY CASE IN DIVISION COURT.

(Insert title of Court and style of cause).

We hereby consent to this cause being entered, tried and finally disposed of under the 91st section of the Division Courts Act. in the Division Court for the County of

Dated, etc.

A. B.) (or by their counsel,
C. D.) solicitor or agents).

192. AGREEMENT NOT TO APPEAL

(Insert title of Court and style of cause.)

We hereby agree not to appeal, in this cause, to the Court of Appeal against the decision of the Judge to be made herein.

Dated this day of , A.D. 18 .

A. B.

C. D.

JURISDICTION.

193. CONSENT TO GIVE JURISDICTION TO THE DIVISION
COURT, UNDER CLAUSE (a) OF SUB-SECTION 1 OF
SECTION 70, AS AMENDED BY 56
VICT. CAP. 15.

(Title of Court and style of cause).

We (or the respective solicitors of) A. B. and C. D. do hereby agree that the First Division Court of the County of Brant, holden at the City of Brantford in the said County, shall have power to try an action (or this action) to be brought by the said A. B. against the said C. D., for _____ (here state the cause of action) under the provision of clause (a) of sub-section 1 of section 70 of the Division Courts Act; the amount claimed not exceeding \$100.00.

Witness our hands this (A. B. (or E. F., Solicitor for A. B.)
day of A.D. 18 C. D. (or G. H., Solicitor for C. D.)

194. UNDERTAKING BY NEXT FRIEND OF INFANT TO BE
RESPONSIBLE FOR DEFENDANT'S COSTS.

In the Division Court in the County of
I, the undersigned E. F., being the next friend of A. B., who
is an infant, and who is desirous of entering a suit in this Court
against C. D., of, etc., hereby undertake to be responsible for the
costs of the said C. D. in such cause, and that if the said A. B.
fail to pay the said C. D. all such costs of such cause as the
Judge shall direct him to pay to the said C. D., I will forthwith
pay the same to the clerk of the Court.

Dated this day of 18 .

(Signed) E. F.

Witness)
)
)

NOTICES BY CLERK.

195. FOR CLERK'S NOTICES TO THE PLAINTIFF.

No. A.D. 18 .

In the Division Court in the County of
Between Plaintiff,
 and
 Defendant.

Take notice that the defendant* has given a confession for the
full amount of your claim.

Or *Disputes your claim, or does not dispute your claim.

Or *Disputes the following items of your claim, viz. (here
specify the items set forth in the defendant's notice to the clerk),
and admits the residue, and you are required forthwith to say in
writing if you are willing to take judgment for the part admitted.

Or *Will on the trial claim a set-off against your demand,
and the particulars thereof are hereunto annexed.

Or *Will at the trial insist that your claim is barred by the
Statute of Limitations (or other statutory defence not herein
specified).

Or *Will on the trial insist that he is discharged from pay-
ment of your claim by the provisions of the Insolvent Act.

Or *Will admit on the trial the 1st, 9th, 11th (or other) items of your particulars of account to be correct.

Or *Will admit on the trial the signing [or endorsement] of the promissory note [or bill of exchange] sued upon [or as the case may be], and denies the residue of your claim.

Or *Has paid into Court the sum of \$, together with \$, for costs of suit incurred up to the day of such payment in full satisfaction of your claim, which will be paid to you upon demand at my office; and all proceedings in the action will be stayed, unless within three days after you receive this notice you signify to me your intention to proceed for the remainder of your demand; and in case you either accept or refuse the same in full, you must give a written notice to that effect to me within the said three days, otherwise you will be liable to pay to the defendant such subsequent costs as he may incur in this action.

Or *Has pleaded that he duly tendered to and offered to pay you before this action was brought the sum of \$ in full satisfaction of your claim, and has filed a plea of such tender in my office, and paid that sum into Court, pursuant to the 122nd section of the Division Courts Act, and that sum will be paid to you, less one dollar, in case you do not wish to further prosecute your suit, and all proceedings in the action will be stayed, unless you signify to me within three days from the time you receive this notice, your intention to proceed for your demand, notwithstanding such plea.

Or *Will on the trial insist that you are not a duly certified solicitor, or not a licensed veterinary or auctioneer, etc. (as the case may be).

Or *Will insist as a defence upon the trial that you have not given the proper notice of action before suit to which the defendant is entitled as a justice of the peace (or peace officer) or as a bailiff of the Division Court under the 290th section of the Division Courts Act.

Or *Defends this action under the protecting clauses of the Division Courts Act, viz.: sections 285, 286, 287, 288, 289, 290, 291, 292, etc.

Or *Has paid into Court the full amount of your demand, together with your costs herein, or has paid into Court \$ part of your claim.

Or *Has filed a statement confessing and admitting \$ part of the amount claimed by you (and proposing to pay the same by instalments of \$). If you consent to accept the amount so admitted (and to the mode of payment by instalment as proposed) it will not be necessary for you to attend on the day of hearing. If, however, you do not consent to accept the sum so admitted in satisfaction of your claim, you must be prepared to prove the same at the sittings of the Court to be holden on the day of A.D. 18 .

Or *Disputes your claim in part only, viz.: (here specify the parts disputed as set forth in defendant's notice) and he admits the residue to be correct, you are therefore required to notify me to say in writing if you are willing to take judgment for the part undisputed; and if you fail to do so it will be assumed that you seek to recover your whole claim, in which case you must proceed to the trial of this cause at the next sittings of this Court to be held on the day of , 18 .

Or *Q. R. and O. K., two of the defendants, have been served with the summonses in this cause, but have not given any notice disputing your claim, that H. J. and L. T., two other of the defendants, have not been served with the summons but have given a confession of the debt.

Or *Has withdrawn his defence and consents that judgment be entered against him for the sum of \$ and costs.

Or take notice that the defendant intends at the hearing of this action to give in evidence and rely upon the following grounds of defence* (here state grounds of defence; see forms following which are suggested and may be varied to suit circumstances).

*That the defendant was an infant, within the age of twenty-one years, when the supposed claim arose (or the supposed contract or agreement was made) and that he was born, as he believes, at in the County of , on the day of , 18 .

Or *That the defendant was discharged by composition, or scheme of arrangement with his creditors, on the day of , 18 .

Or *That no notice of action was given to the defendant pursuant to the statute , Vict. cap. .

Or *That the defendant intends to set up a counter-claim against the plaintiff's demand, the particulars of which are annexed hereto (the clerk is to annex to this notice the particulars

of set-off or counter-claim as furnished by defendant, and is to seal with the seal of the Court the notice and particulars filed in the Court.

Or *That the defendant intends to rely as a matter of equitable defence on the facts set forth in the statement hereunder written.

The facts constituting the equitable defence to this action are as follows:—(Here set out the facts as concisely as possible, and number the paragraphs as in an affidavit).

Or *That the defendant has paid into Court the full amount of your demands, together with your costs herein.

196. ACCEPTANCE OF MONEY PAID INTO COURT.

(Insert title of Court and style of cause).

Take notice that the plaintiff accepts the sum of \$ paid by you into Court in satisfaction of the claim in respect of which it is paid in.

Dated the day of , 189 .

To the said defendant.

N. G.,
Clerk.

197. CLERK'S NOTICE OF TRIAL BY JURY AND NEW TRIAL.

(Insert title of Court and style of cause.)

Take notice that this cause will be tried by a jury, the plaintiff (or defendant) having demanded a jury therein; or, take notice that the Judge has ordered a new trial upon payment of costs (or with costs to abide the event (or as the case may be), and has ordered the next trial to be had before a jury (or as the case may be) and that such trial will be held at the town hall in Paris on , the day of , A.D. 189 , at the hour of o'clock a.m.

Yours, etc.,
R. ROE, Clerk.

To the above-named plaintiff, defendant, primary debtor, or garnishee (or other party as the case may be).

198. NOTICE UNDER SECTION 112.

(Title of Court and style of cause).

Take notice that the Judge has made an order granting leave to the defendant to dispute your claim under section 112, and the defendant has given the requisite notice for that purpose. The trial of the cause will take place at the _____ of _____, in the County of _____, on the _____ day of _____ 189____, at the hour of _____ o'clock in the _____ noon.

Yours, etc.,

To the plaintiff.

R. G., Clerk.

199. CLERK'S NOTICE OF RETURN OF EXECUTION. UNDER SECTION 218.

(Title of Court and style of cause).

Take notice that the execution issued on the transcript of judgment in this cause received from the Division Court of the County of _____, on the _____ day of _____, A.D. 189____, was returned nulla bona on the _____ day of _____, A.D. 189____.

Dated this _____ day of _____, A.D. 189____.

Yours, etc.,

R. ROE, Clerk.

To the above-named plaintiff or defendant, or as the case may be.

200. CLERK'S NOTICE UNDER AMENDED SECTION 87 (52 VICT. CAP. 12, SEC. 5).

(Insert title of Court and style of cause).

Take notice that the proceedings in this action having been duly transferred to this Court the same will be placed on the list for trial at the sittings thereof to be held in the town hall at Castleford in the County of _____ on _____, the _____ day of _____, A.D. 189____, at the hour of _____ o'clock a.m.

Dated th's day of , A.D. 189 .

Yours, etc.,

R. ROE, Clerk.

To the above-named parties and their agents.

201. CLERK'S NOTICES TO EITHER PARTY

(Insert title of Court and style of cause.)

(Append the following to every notice where the defendant, primary debtor or garnishee has given notice that he disputes the plaintiff's claim, or has given any other notice of which the plaintiff should be informed, before the trial; or in any case in which it has become the duty of the clerk to give notice to any part of any defence, admission, Judge's order or other matter of which he should be notified before the trial).

And also take notice that th's action will be tried at the sittings of this Court to be held in the town hall in Paris on Tuesday, the day of , A.D. 189 , at the hour of o'clock a.m.

Dated this day of , A.D. 189 .

Yours, etc.,

R. ROE, Clerk.

To the above-named plaintiff, defendant, primary debtor garnishee (or other party as the case may be).

202. CLERK'S NOTICE TO PARTIES OF TIME FIXED BY JUDGE FOR DELIVERY OF JUDGMENT, UNDER RULE 161.

(Insert title of Court and style of cause.)

Take notice that the Judge will give his decision in this cause at the sittings of this Court to be holden at in the county of upon the day of , A.D. 18 , at the hour of .

(Or, take notice that the decision of the Judge in this cause will be delivered in writing at the office of the clerk of this

Court at in the county of upon the
 day of , A.D. 18 , at the hour of in the
 noon, and will be then and there read by the clerk to the
 parties or their agents if present).

Dated the day of , A.D. 18 .

Yours, etc.,

R. ROE Clerk.

To the above-named parties and their agents.

NOTICES BY PARTIES.

203.—NOTICE OF WITHDRAWAL OF DEFENCE.

(Title of Court and style of cause.)

Take notice that I withdraw my defence, of which I gave you
 notice, and consent that judgment be entered against me for
 the sum of \$.

Yours, etc.,

To the clerk.

C. D., Defendant.

204.—NOTICE OF OBJECTION TO JURISDICTION TO TRY COUNTER-CLAIM.

(Insert title of Court and style of cause.)

Take notice that the plaintiff objects to the Court giving any
 relief upon the counter-claim in this action, upon the ground that
 it involves matter beyond the jurisdiction of the Court.

And further take notice that the plaintiff will, on the day
 appointed for the trial of this action, apply to the Judge to ad-
 judicate upon the original claim herein.

Dated day of , 189 .

A. B., Plaintiff.

To the clerk and to the defendant.

205.—DISCONTINUANCE.

(Title of Court and style of cause.)

I withdraw this action, as I do not intend to proceed with the same, and I am prepared to pay the defendant's taxable costs (if any) on your notifying the defendant and taxing such costs.

Dated this day of , 189 .

To the clerk of the Court
and to the defendant.

)

X. Y.,
the Plaintiff.

206.—NOTICE TO CLERK OF CHANGE IN PLAINTIFF'S
TITLE BEFORE JUDGMENT.

(Title of Court and style of cause.)

I hereby give you notice that A. B., the plaintiff (or one of the plaintiffs) in the above action, died upon the day of , A.D. 18 , and that his last will and testament were duly proved by me in the Surrogate Court of the county of (or that letters of administration of his property were duly granted to me) upon the day of , A.D. 18 , and that I am the executor of the said will (or that I am the administrator of the property of the said deceased).

[Or the above named A. B. by an assignment dated the day of , 18 , duly assigned all his interest in the subject matter of the above action to me, the undersigned.]

And further take notice that I am desirous of being substituted as plaintiff in the above action against the above named defendant in place of the said A. B. (or in addition to the said plaintiff).

Dated this day of , 18 .

Signature.

To Mr.

The clerk of the said Court

207.—GENERAL HEADING AND CONCLUSION OF ALL NOTICES, ADMISSIONS, ORDERS, ETC.

No. , A.D. 189 .

In the Division Court, in the county of

Between A. B., Plaintiff,

and

C. D., Defendant.

Dated this . . . day of . . . , 18 .

To Clerk (or person sending notice,
(the person to whom notice or making admission, or sign-
was sent). ing order).

208.—DEMAND FOR STATEMENT OF NAMES AND PLACES
OF RESIDENCE OF PERSONS CONSTITUTING PLAINTIFF'S FIRM.

(Title of Court and style of cause.)

Sir,—On behalf of the above-named defendant E. F., I require of you forthwith to declare to me, in writing, the names of all persons who are partners in the firm of A. B. & Co., the above-named plaintiffs, pursuant to the 108th section of the Division Courts Act.

Dated, etc.

Yours, etc.,

M. N.,

Solicitor or agent for the defendant E. F.

To Mr. X. Y.

The plaintiffs' solicitor (or agent), (or as the case may be).

209.—DECLARATION IN ANSWER THERETO.

(Title of Court and style of cause.)

Sir.—The names and places of residence of all the persons

constituting the firm of A. B. & Co., the above-named plaintiffs,
are as follows:

A. B., who resides at, etc.
G. H., who resides at, etc.
L. M., who resides at, etc.

Yours, etc.,

X. Y.,

Plaintiffs' solicitor (or agent).

To Mr. M. N.

Solicitor (or agent) for the defendant E. F.

210.—NOTICE OF APPLICATION FOR ORDER FOR NAMES
OF MEMBERS OF FIRM.

(Title of Court and style of cause.)

Sir,—Take notice that a motion will be made on behalf of
the above-named defendant to the Judge of this Court, at his
chambers, in the court house, in the city of Hamilton (or as the
case may be), on the day of , 18 , at ten o'clock
in the forenoon, or so soon thereafter as the motion can be heard,
or an order under the 108th section of the Division Courts Act,
directing a statment to be furnished to me of the names of all the
persons who are co-partners in the firm of A. B. & Co., the above-
named plaintiffs. That on such application will be read the affi-
davits of copies of which are hereto annexed.

Dated, etc.

Yours, etc.,

M. N.

Solicitor (or "agent") for the defendant E. F.

To Mr. X. Y.

The plaintiffs' solicitor (or agent as the case may be).

211.—FORM OF ORDER FOR STATEMENT OF THE NAMES
OF ALL THE PERSONS WHO ARE CO-PARTNERS
IN THE PLAINTIFFS' FIRM.

(Title of Court and style of cause.)

Upon the application of the above-named defendant in this
cauce, and upon reading the affidavit of service of demand herein,

and of (if any other affidavit filed), and upon hearing the parties by their solicitors (or agents);

It is ordered that the above-named plaintiffs do within days of the service of this order, furnish to the defendant, his solicitor or agent, a statement of the names of all the persons who are co-partners in the firm of A. B. & Co., the above-named plaintiffs.

(Any other term may be here added).

Dated, etc.

Judge.

CERTIFICATES AND ORDERS OF CLERK AND JUDGE.

212.—CERTIFICATE UNDER SECTION 45.

[Seal]

I, A. B., clerk of the _____ Division Court in the county of _____, do hereby certify as follows:

That in the procedure book of the said Division Court the following entries (and no others) appear in a certain cause in the said Division Court wherein one C. D. is plaintiff, and one E. F. is defendant, which said entries are in the words and figures following, that is to say: (here copy entries verbatim).

And I further say that the page of the said procedure book on which said entries are made is signed with the name of _____ and such signature is of the proper handwriting of me, A. B., as such clerk (or of G. H., the then clerk) of the said Court.

Given under my hand and the seal of the said Court this day of _____, A.D. 18 .

A. B.,
Clerk of said Division Court.

213.—CLERK'S CERTIFICATE OF PROCEEDINGS TO COURT OF APPEAL.

(Title of Court and style of cause.)

I, _____ clerk of the said Court, do hereby certify to the Court of Appeal for the Province of Ontario, that the annexed

papers contain true and examined copies of the summons in this cause, with all notices endorsed thereon, the claim, and any notice or notices of defence and of the evidence and all objections and exceptions thereto, and of all motions or orders made, granted or refused herein ("together with such notes of the Judge's charge as have been made, if the cause tried by a jury"), the judgment or decision in writing (or "the notes thereof") and all affidavits filed or used in the cause, together with all other papers filed in the cause affecting the questions raised by the appeal.

Given under my hand and the seal of the said Court this
day of _____, A.D. 18__.

[Seal of Court.]

Clerk.

214.—CERTIFICATE OF JUDGE AS TO EXCEPTION IN EX-
EMPTION LAW, WHERE DEBT IS CONTRACTED
PRIOR TO THE FIRST DAY OF OCTOBER, 1887.

I, _____, Judge of the _____ Division Court for the
county of _____, do hereby certify under the provisions of
chapter 64, section 7, of the Revised Statutes of Ontario, that
this writ of execution is for the recovery of a debt contracted
before the first day of October, 1887, as appears by the papers on
file herein.

Dated the _____ day of _____, 18__.

Judge.

(The above certificate to be endorsed on the execution.)

215.—SUMMONS TO CHANGE THE PLACE OF TRIAL, UNDER
SECTION 86.

(Insert title of Court and style of cause.)

Upon reading the affidavit of the defendant, and upon hearing
him by his solicitor (or agent), let the above-named plaintiff, his
solicitor or agent, attend me at my Chambers, at _____, on the
_____ day after the day of service hereof, at _____ of the clock in the
forenoon of the same day, or at such other time and place as
Chambers may be held, to show cause why the place of trial of

this cause should not by order be changed to the sittings of the Division Court for the county of , pursuant to the 86th section of the Division Courts Act; and why such order should not direct the trial of this cause to be had at the (next) sittings of that Court, to be held on the day of next, subject to all the rights of postponement.

Dated at Chambers, this day of , A.D. 18

(Instead of using this form and proceeding by Judge's summons, the defendant may apply by serving notice of motion and copy of the affidavit on the plaintiff).

216.—ORDER CHANGING THE PLACE OF TRIAL, UNDER SECTION 86.

(Insert title of Court and style of cause.)

Upon reading the affidavit of the defendant herein, and upon hearing the parties by their solicitor (or agent).

I do hereby order that the place of trial of this cause be changed to the sittings of the Division Court of the county of , pursuant to the 86th section of the Division Courts Act; and I further order and direct that the cause shall be tried at the (next) sitting of that Court, to be held on the day of next, subject to all rights of postponement.

Dated at Chambers, this day of , A.D. 18
Judge.

217.—ORDER TO CONTINUE PROCEEDINGS FOR OR AGAINST A NEW PARTY.

(Title of Court and style of cause.)

Upon hearing C. L., who alleged (state circumstances rendering the order necessary or proper).

It is ordered that the proceedings in this action be carried on between (naming the continuing or new parties, as the case may be, whether as plaintiffs or defendants) and H. R. (the person upon whom the interest has devolved or to whom an interest has been assigned).

Judge.

Date.

CHANGE OF PARTIES.

218.—ORDER TO PROCEED AFTER THE DEATH OF A PLAINTIFF AFTER JUDGMENT.

(Title of Court and style of cause.)

Upon reading the affidavit of

It is ordered that E. Y., the executor (or administrator) of A. B., the plaintiff in this action, who has died since judgment herein, be substituted as plaintiff for the original plaintiff, and be at liberty to issue execution against the defendant (or take any such proceedings as the deceased plaintiff was entitled to take against him) for the amount of the unsatisfied judgment and costs [or that the question whether the said E. Y., as executor (or administrator) of the original plaintiff, now deceased, is entitled to recover the amount of the judgment against C. D., the defendant] shall be tried by action to be commenced by plaintiff in the ordinary way wherein the said E. Y. shall be plaintiff and the said C. D. defendant, by such names and descriptions as aforesaid.

Date, etc.

Judge.

219.—ORDER TO PROCEED AFTER CHANGE OF INTEREST BY ASSIGNMENT OR OTHERWISE AFTER JUDGMENT.

(Title of Court and style of cause.)

Upon reading the affidavit of

It is ordered that E. N., the assignee (or as the case may be) of the judgment obtained by A. B., the plaintiff (or C. D., the defendant, as the case may be) in this action be substituted as plaintiff (or defendant) in the name by the description of E. N., of, etc., the assignee of A. B., the plaintiff (or C. D., the defendant) herein, and that he in and by such name and description be at liberty to issue execution.

[Conclude as in preceding Form 218.]

NOTE.—No proceedings under a judgment or order either by judgment summons or otherwise can be taken after any change of interest in the parties entitled to the benefit of the judgment or order without an order in one of the foregoing Forms.

220.—RETURN BY JUDGE TO CERTIORARI.

(In the High Court of Justice, Queen's Bench Division, or as the case may be.)

The answer of me, A. B., Judge of the County Court of the county of _____, who, by virtue of this writ, to me directed and delivered, do, under my hand and seal, certify unto Her Majesty, in her High Court of Justice for Ontario, at Toronto, the (here describe what the writ calls for), of which mention is made in the same writ. The return to this writ further appears by a certain schedule annexed thereto.

In witness whereof, I, the said A. B., have to this affixed my hand and seal, this _____ day of _____, 18 ____.

A. B. (L.S.)

[The following schedule will be annexed to the certiorari.]

SCHEDULE

Referred to in the return to the annexed writ of certiorari endorsed thereon.

(Here give in regular order the papers in the suit returned with the certiorari, and annex the original papers to the schedule)

A. B.,

Judge of the County Court of the county of _____

MISCELLANEOUS FORMS.

221.—LIST OF UNCLAIMED MONEYS VERIFIED.

List of unclaimed moneys paid into Court or to me as clerk thereof which remain unclaimed for six years ending on the 31st day of December last past.

For whom or on whose account money paid.	When paid.	Style and No. of Suit.	Amount.	
			£	cts.

I, X. Y., clerk of the _____ Division Court in the county of _____, make oath and say that * the foregoing return is

full and correct in every particular * (or if no moneys remain unclaimed, instead of the matter between the asterisks say "no such moneys paid into Court, or to me as clerk therefore remain unclaimed for six years next before 31st day of December last past.")

Sworn, etc.

X. Y.,
Clerk.

222.—PAY LIST OF JURORS.

Summoned to attend at a sitting of Division Court of
the county of , on the day of , A.D. 18 , and
Judge's Certificate to County Treasurer.

No. on list.	Names of Jurors.	Date of service.	Attendance.		Am't paid each Juror.		Signature of Juror acknowledging receipt of money.
			1st. day.	2nd. day.	s	c.	
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							

Total amount paid by Clerk...\$

I, , presiding Judge of the above-mentioned Court, do hereby, in pursuance of the 172nd section of the Division Courts Act, certify to the treasurer of the said county of , that the above is a true statement of the amount paid by the clerk of the said Court to each of the jurors mentioned in the above list, who were summoned and attended said sittings, and neither of whom so attended as a witness in any cause or as a litigant in his own behalf, amounting in the whole to \$.

Dated this day of , 18 .

Judge.

CROSS JUDGMENTS.

223.—NOTICE OF APPLICATION UNDER SECTION 213, FOR
JUDGE'S ORDER FOR CROSS JUDGMENT TO BE
SET-OFF.

(Insert title of Court and style of cause.)

Take notice that application will be made to the Judge on
the day of , 18 , at his Chambers in
at the hour of o'clock a.m., for an order directing that the
cross judgments which have been entered between the parties
in these causes be set-off, the one against the other, and that
satisfaction of the judgments so set-off be entered by the clerk
in the procedure book as directed by the 213th section of the Act.

Dated, etc.

Yours, etc.

This notice to be served by the party making the application.

224.—JUDGE'S ORDER, UNDER SECTION 213.

(Insert title of Court and style of both causes).

Upon reading the notice served upon the defendant (or plain-
tiff) in this cause and the affidavit of service thereof, and upon
the application of the plaintiff (or defendant) in the
first cause above named and the defendant (or plaintiff) in the
second cause above named, or as the case may be), and no cause
appearing to the contrary, I do order that the cross judgment
between the parties in these causes be set-off the one against the
other, and that who has obtained judgment for the
larger sum, shall have execution only for the balance over
the smaller judgment, and that the clerk do make in the pro-
cedure book in both the said causes an entry of this order, and
also enter a satisfaction on the judgment for the smaller sum;
but if both sums are equal, that he do enter in the procedure
book satisfaction of both judgments, and that execution thereon
be stayed.

Dated, etc.

Judge.

Form

225.—ENTRY OF SATISFACTION OF SMALLER JUDGMENT,
UNDER SECTION 213.

Satisfaction is entered under section 213, in this section, by setting off judgment between the same parties in suit number , 18 , by Judge's order.

Form

226.—ENTRY OF PARTIAL SATISFACTION ON LARGER
JUDGMENT, UNDER SECTION 213.

Satisfaction is entered for \$, part of the amount adjudged to the plaintiff (or defendant) by Judge's order under section 213, by setting-off the amount adjudged against him in favor of the plaintiff (or defendant) in suit between them numbered , 18 . and it is further ordered that the plaintiff (or defendant) do have execution only for \$, the balance over the said judgment.

227.—REQUEST OF CREDITOR FOR DISCHARGE OF DEBTOR
ARRESTED ON WARRANT OF COMMITMENT.

(Title of Court and style of cause.)

I, the undersigned A. B., the plaintiff (or the beneficial plaintiff) in this action, request that the defendant, if still in custody, may be discharged (or, if not in custody, that he be not arrested).

A. B.

To the clerk

(or to the bailiff)

of the said Court.

228.—CERTIFICATE FOR DISCHARGE OF A PARTY FROM
CUSTODY.

No. , A.D. 18 .

(Insert title of Court and style of cause.)

I. X. Y., certify that the defendant, now in your custody under warrant of commitment in this cause, has, since the issuing



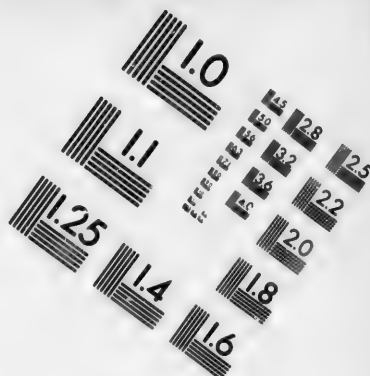
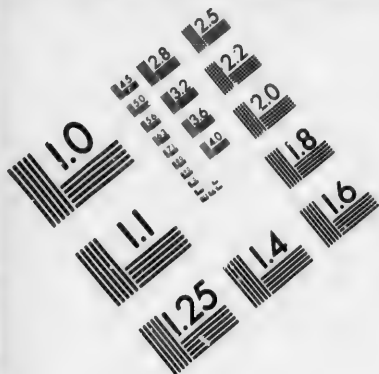
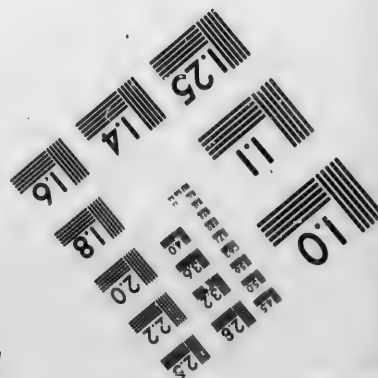
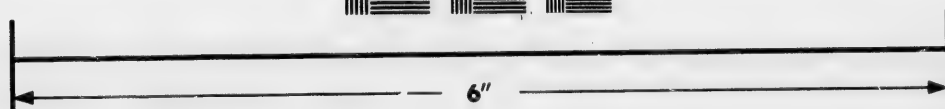
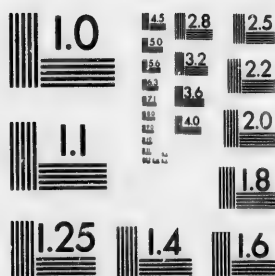


IMAGE EVALUATION TEST TARGET (MT-3)



Photographic
Sciences
Corporation

20 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

1.5 2.8 2.5
1.0 3.2 2.2
0.8 3.6 2.0
0.6 4.0 1.8

10
0.1

to him from me (and that I will pay the same by instalments of).

Dated this day of , 189 .

Signed in the presence of .

[This paper marked "A" is the statement referred to in the annexed affidavit.]

231.—AFFIDAVIT OF SIGNATURE TO ADMISSION

(Insert title of Court and style of cause.)

I, , of , gentleman, make oath and say that I was present on the day of , A.D. 189 , and did see the above-named defendant sign the statement hereunto annexed, marked with the letter "A," and that the name set to the said statement is in the handwriting of the defendant, and that the name set to the said statement as the witness attesting the same is in my handwriting.

[Conclude as in other affidavit Form.]

BAILIFF'S FORMS.

232.—APPRAISER'S OATH IN ATTACHMENT CASES.

You, and each of you, shall well and truly appraise the property and effects mentioned in this inventory (holding it in his hand) according to the best of your judgment. So help you God.

233.—APPRAISEMENT TO BE ENDORSED ON INVENTORY.

We, B. B. and B. D., having been duly sworn by the bailiff, V. W., to appraise the property and effects mentioned in the within inventory, to the best of our judgment, and having examined the same, do appraise the same at the sum of \$.

Witness our hands this day of , A.D. 18 .

B. B.

B. D.

234.—NOTICE OF SALE.

By virtue of an execution issued out of the Division
Court for the county of , and to me directed, against
the goods and chattels of , at the suit of , I
have seized and taken in execution, one bay horse, etc.

All which property will be sold by public auction, at .
on the day of , 18 , at the hour
of o'clock in the noon.

V. W.,

Bailliff.

Dated day of , 18 .

RETURNS TO EXECUTIONS, ETC.

235. Nulla Bona.—The within defendant (or plaintiff) hath
no goods or chattels in the said county of , whereof I can
make the moneys to be levied, or any part thereof as within
commanded.

V. W.,

Dated day of A.D. 18 . Bailliff

236. Fecl.—By virtue of the within execution, I have made of
the goods and chattels of the defendant (or plaintiff) the moneys
within mentioned, and have paid the same to the said clerk as
within commanded.

V. W.,

Dated day of A.D. 18 . Bailliff.

237. Any part made.—By virtue of the within execution, I
have made of the goods and chattels of the defendant (or plain-
tiff) \$, and have paid the same to the said clerk, and
the defendant (or plaintiff) hath no more goods or chattels in the
said county of whereof I can make the residue of the said
moneys, or part thereof.

V. W.,

Dated day of A.D. 18 . Bailliff.

238. WHEN RENT LEVIED BY BAILIFF.

By virtue of the within execution, I have made of the goods
and chattels of the plaintiff (or defendant) \$ part whereof,
\$, I have paid to O. B., landlord of said plaintiff (or
defendant), for one quarter's rent in respect of premises when
levy made; and a further part \$, I have retained as fees
on execution. The residue \$ I have paid to the said
clerk as within commanded.

V. W.,

Dated day of A.D. 18 . Bailliff.

239. FORM OF BAILIFF'S RETURN.

B.—This form is to be used in making returns under the 138th General Rule, which rule is to be read and understood in connection with the provisions of the Division Courts Act, touching the execution and return of Writs of Execution, and with Rule 194. As the return is made and sworn to every Court day, the dates are to be filled in as noted, viz.:—(a), the day next before the last Court day; (b), the day on which return made; and note further—(c), when process is other than a Writ of *Fieri Facias*, it should be so noted; (d), in this column is to be set down the particular return made, with any other information necessary to show the due and faithful discharge of duty by the Bailiff in respect to each case.

Return of V. W., Bailiff of the Division Court in the County of _____, made in pursuance of the Rules of Practice touching all Warrants, Precepts and Writs of Execution, acted on or in hand, between the (a) _____ day of _____, A.D. 18 _____, and the (b) _____ day of _____, A.D. 18 _____.

Numbers.	Style of Cause.	When Writ of <i>Fieri Facias</i> received (c).	Amount to be levied.	Amount levied.	When levied.	Amount of Bailiff's charges.	Amount paid to Clerk.	When Paid.	Remarks (d).
		A.D. 189 .	\$ cts.	\$ cts.	A.D. 189 .	\$ cts.	\$ cts.	A.D. 189	

I, V. W., above-named, make oath and say, that the foregoing return is full, true and correct in every particular.
Sworn before me at _____, in the County of _____ this _____ day of _____, A.D. 18 _____.

V. W., Bailiff.

X. Y., Clerk

N.B.—The foregoing return will serve as a guide for the form and mode of ruling "The Bailiff's Process Book."

APPEALS.

DITCHES AND WATERCOURSES.

The following shall be the forms used in appeals in proceedings under the Ditches and Watercourses Act, R. S. O. cap. 220.

240. NOTICE OF APPEAL UNDER SECTION 11.

To R. S., the clerk of the municipality of the township of _____ in the county of _____

Whereas, under the Ditches and Watercourses Act, A. B., of the _____ of _____ in the county of _____, the engineer appointed by the said municipality of the township of _____ to carry out the provisions of the above Act, did make his award in writing bearing date the _____ day of _____ 18____, which award, with the plan and profile referred to therein (or as the case may be), was filed in your office on the _____ day of _____ 18____.

Take notice that I, C. D., of the _____ of _____ in the County of _____, am a party interested and affected by the matters set forth and determined by the said award, and I am dissatisfied with the said award, and that the amount involved in this, my complaint, exceeds \$20. I do, therefore, hereby appeal from the said award to the Judge of the County Court of the County of _____, being the county in which the lands affected by the said award are situate, and the grounds of my appeal are as follows:

In and by the said award it is provided (here set forth so much of the award as is complained of).

I object to the said award in this:—

1st. That I receive no benefit whatever from the said ditch or drain (as the case may be), or 2nd. That I am required by the said award to open up and maintain a much larger proportion of the said ditch or drain than is my just share in proportion to the benefits I shall derive from the said ditch or drain. 3rd. That the sum of \$ _____ apportioned against me as my share of the costs of the said engineer is in excess of what should be my just proportion thereof.

(Here set forth any other grounds of appeal that are relied on,

or substitute any other grounds in place of the above, which are merely given as examples).

Dated this day of 18 .

C D.

NOTE.—If there be more than one appellant, and they desire to join in the appeal, the above notice will be changed accordingly.

241. ORDER BY JUDGE FOR TRIAL OF APPEAL AND FOR DEPOSIT TO BE MADE BY APPELLANT UNDER SEC. 11, SUB-SECS. 2 AND 3.

In the Division Court for the County of

In the matter of the appeal by C. D. against the award of A. B., the engineer appointed by the municipality of the township of in the County of under the "Ditches and Watercourses Act."

I hereby order and direct that the said appellant, C. D., do within six days deposit with the clerk of the Division Court of the County of the sum of \$ (or such sum as may be ordered) as an indemnity against the costs of the said appeal.

And upon such deposit being so made I order that the said appeal be tried at the sittings of the said Court to be held in the Court room in the of in the said County on the day of 18 , at the hour of o'clock in the noon.

Dated this day of , 18 .

To C. D.,

Appellant, and to

X. Y.,

the clerk of the said Court.

V. W.,

County Judge.

NOTE.—Where the Judge does not direct the deposit to meet costs the form will be varied.

242. JUDGMENT BY COUNTY JUDGE ON APPEAL, SEC. 11, SUB-SEC. 4.

In the matter of the appeal of C. D. against A. B., the engineer appointed by the municipality of the township of in the County of under the "Ditches and Watercourses Act."

The said appeal having come on for hearing before me this day of , 18 , at the sittings of Division Court for the County of (or as the case may be), in the presence of the said C. D., and all other parties interested (name the other parties if judgment affects them, and if any of them are not present state their absence), after hearing what was alleged by the said C. D., and by the other parties affected by the said award, I do order and adjudge that the said award be, and the same is hereby confirmed (or insert after the word award), be set aside, or be altered and amended as follows (here set out the particular alterations), and I direct that the same be certified by the clerk of this Court to the clerk of the said municipality.

And I tax and fix the costs of this appeal at \$, including \$, my expenses herein, which said costs I order to be paid by the said C. D., or to be paid and apportioned as follows (here state by whom and in what proportions the costs are to be paid). The said sum of \$ being my said expenses to be paid in the first instance by the said municipality. (Stat. of 1890, c. 67.)

Dated this day of , 18 .

V. W.,

County Judge.

243. DIVISION COURT CLERK'S CERTIFICATE OF AWARD
AS AMENDED (OR CONFIRMED) BY THE COUNTY
JUDGE, TO BE SENT TO THE CLERK OF
THE MUNICIPALITY.

In the Division Court of the County of .
In the matter of the appeal of C. D. (as in Form .)

The following is a copy of the judgment given by the Judge of the County Court of the County of on the hearing of the above appeal.

(Here copy the judgment).

I hereby certify that the award of the said A. B., the engineer appointed by the said municipality of the township of , has by the said judgment been confirmed (or has by the said judgment been altered and amended as set forth in the said judgment), and that the costs of, and incidental to the

said appeal as allowed by the said Judge are set forth therein, and the parties by whom the same are ordered to be paid.

Dated this day of 18 .

To R. S.,
the clerk of the said municipality.

X. Y.,
Clerk.

NOTE.—If award set aside this form will be varied accordingly.

244. APPEALS UNDER LINE FENCES ACT.

Notice of Appeal.

To A. B., C. D., and E. F., three fence viewers of the township of , in the County of and to G. H., of the same place.

Take notice that I, J. K., of the of in the County of , being the person affected by the award hereinafter mentioned, and being dissatisfied with the said award, do intend to prosecute an appeal to the County Judge of the County of , against an award made under "The Line Fences Act," by the said A. B., C. D. and E. F., three fence viewers as aforesaid (or as the case may be), dated the day of , 18 , whereby I, the said J. K. (here set out the award, or such portion of it as is complained of.)

And further take notice that the cause and matter of my appeal are:

First, (here set out in detail all the grounds of complaint against the said award.

Dated this day of 18.

J. K.

245. ORDER BY JUDGE FOR DEPOSIT BY APPELLANT AND FOR TRIAL OF APPEAL UNDER "THE LINE FENCES ACT."

In the matter of the appeal by J. K. against the award of A. B., C. D. and E. F., three fence viewers of the township of in the County of .

I hereby order and direct that the said appellant C. D., do within six days deposit with the clerk of the Division Court of the County of , the sum of \$ (or such sum as may be ordered), as an indemnity against the costs of the said appeal.

And upon such deposit being so made, I order that the said appeal be tried at the sittings of the said Court, to be held at the Court room, in the of , in the said County on the day of 18 , at the hour of o'clock in the noon.

Dated this day of , 18 .

To J. K.,	}	V. W.,
the above appellant, and to		County Judge.
X. Y.,		
the clerk of the said Court.		

NOTE.—Where the Judge does not direct the deposit to meet costs the form will be varied.

246. JUDGMENT BY COUNTY JUDGE ON APPEAL UNDER "THE LINE FENCES ACT."

In the Division Court in the County of

In the matter of appeal by J. K. against the award of A. B., C. D. and E. F., three fence viewers of the township of , in the County of , under "The Line Fences Act."

The said appeal having come on for hearing before me this day of 18 , at the sittings of the Division Court for the County of (or as the case may be), in the presence of the said J. K., and all the parties interested (name the other parties if judgment affects them, and if any of them are not present state their absence), after hearing what was alleged by the said J. K., and by the other parties affected by the said award, I do order and adjudge that the said award be, and the same is hereby affirmed (or insert after the word award "be set aside," or "be altered and amended as follows," here set out the particular alterations.)

And I direct that the same be certified by the clerk of this Court to the clerk of the said municipality.

And I tax and fix the costs of this appeal at \$, including \$ my expenses herein, which said costs I order to

be paid by the said J. K. (or "to be paid and apportioned as follows," here state by whom and in what proportions the costs are to be paid). The said sum of \$, being my said expenses to be paid in the first instance by the said municipality. (Stat. of 1890, c. 67).

Dated this day of , 18 .

V. W.,
County Judge.

247. FORMS FOR APPEALS UNDER MASTER AND SERVANT ACT AND TAX ON DOGS ACT.

Notice of appeal under Master and Servant Act, R. S. O. cap. 139.

To A. B. of, etc. (the name and addition of the party to whom the notice of appeal is required to be given).

Take notice, that I, the undersigned C. D., of, etc., being the person aggrieved by the order hereinafter mentioned, do intend to enter and prosecute an appeal at the (next) sittings of the Division Court for the County of , to be holden at , on the day of next (or "instead") against a certain order made by L. M., Esquire, one of Her Majesty's Justices of the Peace in and for the (said) County of [or "police magistrate" in and for the city (or town) of] whereby I, the said A. B., was ordered to pay (here state the terms of the order made as fully and correctly as possible).

And further take notice, that the cause and matter of my appeal are, first, that [I never was indebted to the said A. B. for the said amount of wages so ordered to be paid by me; secondly, that before the proceedings were taken on which the said order was made, I paid the said A. B. the wages in said order mentioned] together with any other cause or matter of appeal, care being taken that all grounds of appeal relied on are stated, as the appellant will be precluded from going into any other than those stated.

Dated this day of , A.D. 18 .

A. B.

NOTE.—The above Form may be varied to suit the case where the appeal is against an order of dismissal or other decision of the justice.

248.—APPEAL BOND OR APPEAL AGAINST AN ORDER FOR
PAYMENT OF WAGES UNDER MASTER AND
SERVANT ACT, R. S. O. CAP. 139.

Know all men by these presents, that we, C. D., of, etc., and E. F., of, etc., and G. H., of, etc., are jointly and severally held and firmly bound to A. B., of, etc., in the final sum of one hundred dollars of lawful money of Canada, to be paid to the said A. B., or his certain attorney, executors, administrators or assigns, for which payment, well and faithfully to be made, we bind ourselves, and each and every of us in the whole, our and each and every of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this day of in the year of our Lord one thousand eight hundred and .

Whereas the said A. B., on the day of , instant (or "last past"), made complaint against the said C. D., before L. M., one of Her Majesty's Justices of the Peace in and for the County of [or "the police magistrate" in and for the city (or town) of], for the alleged non-payment of wages by the said C. D. to the said A. B.

And, whereas, the said C. D. was, on the day of , instant (or "last past") by the said L. M. as such justice as aforesaid (or "as such police magistrate") ordered to pay to the said A. B. the sum of (here fully and particularly state the substance of the order).

And, whereas, the said C. D. being dissatisfied with the decision if said complaint, and with the said order made thereon, is desirous of appealing against the same to the Division Court for the (said) County of at its (next) sitting, to be held on the day of next (or instant), and, in pursuance of the statute in that behalf, this bond is given as security to such appeal.

And, whereas, the above bounden E. F. and G. H., at the request of the said C. D., have agreed to enter into the above written obligation, for the purposes aforesaid.

Now, therefore, the condition of this obligation is such, that if the above bounden C. D. shall personally appear at the said Court and try such appeal, and abide the judgment of the Court thereon, and pay such costs as shall be by the said Court awarded,

then this obligation shall be void, otherwise the same shall remain in full force and effect.

Signed, sealed and delivered by the	C. D. [Seal.]
above bounden C. D., E. F. and	E. F. [Seal.]
G. H., in the presence of J. K.	G. H. [Seal.]

(The above form can be altered to suit the circumstances of any particular case.)

249. APPROVAL OF APPEAL BOND BY THE CLERK, TO BE
ENDORSED ON BOND.

I approve of the within bond and of the sufficiency of the sureties therein named.

Dated this day of , 18 .

X. Y.,
Clerk.

[When required by the clerk, affidavit of justification must be made, and Form 35 for affidavit of execution of the bond.]

250. DEMAND OF JURY, UNDER MASTER AND SERVANT
ACT AND TAX ON DOGS ACT.

In the Division Court in the County of
A. B., Appellant,
v.
C. D., Respondent.

Take notice that I hereby require a jury to be summoned in this appeal.

Dated this day of , A.D. 18 .

A. B.,
Appellant.
or C. D.,
Respondent.

To the Clerk of this Court.

THE INDUSTRIAL SCHOOLS ACT.

251. SUMMONS FOR MAINTENANCE.

(Title of Court and style of cause.)

You, the above-named defendant, are hereby summoned to appear at _____ in the County of _____ on _____ the _____ day of _____ A.D. 18 _____, at the hour of _____ o'clock in the forenoon, to answer the allegation of the plaintiff that you, the same defendant, are liable for the expense of maintaining one E. D., a boy detained in the Industrial School under the charge of the above-named plaintiffs in the Village of Mimico, in the County of York, a copy of which is herunto annexed.

And further, you are hereby required to take notice that the plaintiffs claim that you are able to pay the sum of \$ _____ per week towards the said expenses, and that if you do not appear at the said time and place, such order will be made in your absence as may seem just.

Given under the seal of the Court and dated this _____ day of _____ A.D. 18 _____.

R. R.,
Clerk.

252. ORDER ON PARENT, STEP-PARENT OR GUARDIAN,
FOR THE PAYMENT OF WEEKLY SUM FOR
MAINTENANCE OF CHILD.

On the complaint of the Victoria Industrial School Association of the City of Toronto (or of the School Corporation or Philanthropic Society—mentioning its corporate name) or of A. B., the agent of the (here name the corporation or society of which he is agent), the defendant having been summoned to appear at a sittings of the said Court on the _____ day of _____ 18 _____, at _____ in the said County _____ to answer the said complaint and the allegation that the defendant is liable for the expense of maintaining one C. D., a boy detained in the said Industrial School (or name the society) under the charge of the plaintiff in the Village of Mimico, in the County of York, and it being found that the defendant is able to pay the sum of

\$ per week towards the said expenses; it is therefore adjudged and ordered that the defendant do pay the plaintiffs the sum of weekly, as follows, viz.: (here state the time and manner of such payments.)

253. FORM OF COMPLAINT.

(Title of Court and style of cause.)

The plaintiff alleges that E. D. is a child, who is, and has been detained in the certified industrial school under the charge of the plaintiffs for weeks, in the Village of Mimico, in the County of York, the defendant is the parent (or guardian or step-parent of the said E. D.) and is liable for the expense of maintaining the said child, and they claim that the defendant is able to pay the sum of \$ per week towards the said expense, and does not pay the same, but refuses to do so, and hereby apply for an order in that behalf.

Scaled with the seal of the corporation this day of
A.D. 18 .

R. L. N., President or Agent or Secretary or Treasurer of the said Corporation.	Corpor- ate Seal.
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CORRECTIONS.

Page 235—Tariff of fees—Item 22. Transcript to County Court should have been omitted. (See Observations, p. 131).

Page 242—Index to Rules—Absent parties. The reference number 239 should read 230.

Page 268—Tariff of officers' fees. The reference numbers have been omitted; they are 233, 238; also of witness fees, 239; of appraisers' fees, 239, 240, and tariff of County Court fees, 241.

